Supreme Court, U.S.
FILED

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OFFICE OF THE CLERK

No._____

In The Supreme Court of the United States

James W. Vogt, Petitioner

v.

**Nancy J. Churchill,
Commissioner, Department of Human Resources,
Respondents**

**On Petition For Writ of Certiorari
To The Maine Supreme Judicial Court**

PETITION FOR A WRIT OF CERTIORARI

**James W. Vogt
Pro Se
170 Main St Apt 15
Springvale, ME 04083
207-490-9012**

122 pp

Questions Presented for Review

1. Does a person participating in a domestic relations litigation leave the Constitution and Bill of Rights outside the door when they enter the court room, and if not, what rights do they have, and, if any rights exist, were any violated or continue to be violated?

2. Given that not a single Maine judge or lawyer who violated any of the countless laws, canon, bar or professional conduct rules, constitutional, civil, human rights during this nine year litigation was never criticized, much less punished by any judicial, executive, law enforcement, law making and/or regulating agency at the State or Federal level because of immunity or impotence by design of those regulating and/or law enforcement agencies, is not this ability to evade prosecution and avoid redress a right and privilege the majority of the population does not enjoy, therefore a violation of equal protection, titles of nobility and right to seek redress provisions of the Constitution and Bill of Rights?

3. Has judicial discretion been defined so narrowly by the Maine SJC that actual felony crimes such as grand theft and perjury, gross misconduct, malfeasance, misfeasance and violation of any law, right, Canon or bar rule no longer constitutes abuse, and if so, does not this ruthless definition violate the equal protection, fair trial and due process clauses, and, unless every other state is allowed to practice the same type of 'law', isn't this a violation of my rights to enjoy the same rights and privileges as those of citizens of the other states, to say nothing of destroying the image of the judiciary in the eyes of the public?

4. Does the High Court condone the persecution of dissidents and mistreatment of Pro Se parties by an entire state judiciary and legal community, and if not, does the following statement by District Court Justice Joseph Field, on the record, just days before the appeal was denied, constitute a conspiracy under color of law to violate the Constitutional and Civil rights of a dissident (said statement reflecting the totality of the conduct of that judiciary for nine years):

> ***"and because of his own—all this crap he insists on filing he has put himself, frankly, behind the eight ball with regards to the justice system (page 12, ln 4)"***

5. As a nation signatory on the United Nations Declaration of Human Rights, is an American citizen involved in a domestic relations matter entitled to the protection of those same human rights, and if so, were my human rights violated and do they continue to be violated?

Basis for Jurisdiction

The judgement in Lin-99-396 was dated January 24th, 2000. The denial of a Motion to reconsider was dated February 16th, 2000. The judgment in Yor-99-525 was dated March 31, 2000.

The Court has jurisdiction because: a state court has issued an opinion contrary to an Appeal court on an important matter; a state court has departed from the accepted and usual course of judicial proceedings or sanctioned such a departure by a lower court; a state court of last resort has decided an important federal question in a way that conflicts with the decision of another state court of last resort or of a United States Court of Appeals; a state court has decided an important question of federal law that has not been, but should be, settled by this Court, or has decide an important federal question in a way that conflicts with relevant decisions of this Court.

The writ deals with violations of the rights and protections guaranteed by law, said violations an organized activity of an entire state judicial/law enforcement organizations.

The US Supreme Court has heard issues surrounding domestic relations matters in the past when they dealt with fair trial, appeal issues (95-853, Dec, 1996, MLB v SLJ, citing *Mayer v Chicago*, 404U.S. 189(1971),

Forced dissolution of (her) parental rights—are large, "more substantial than mere loss of money"...and the risk of error is considerable. *Santosky*, 455U.S. 756 quoting *Addington v Texas*, 441 U.S. 418, 424 (1979)

"Barber v Barber, Article III and our cases since Barber makes clear that the Constitution does not exclude domestic relations cases from the jurisdiction otherwise granted by statute to the federal courts" 91-367, Carol Ankenbrandt v Jon A Richards and Debra Kesler, June 15, 1992

"Balancing responsibility between federal and state governments in a republic that assigns interlocking sovereignty to each often requires federal courts to walk an unsteady tightrope. From a federal court's perspective, this sort of judicial funambulism always must proceed in the spirit of cooperative federalism tempered, however, by the need to avoid the pitfalls inherent in blind deference to state autonomy" Circuit Judge Selya, District of New Hampshire in 95-2121, Brooks v New Hampshire Supreme Court, Et Al.,

This Writ deals a protective order issued against me at an unrecorded hearing, whose "facts" were incorporated from the judges "notes" which he would not turn over. This order, obtained where no evidence of abuse existed or was presented, has scared my name and rights for life (Omnibus Act).

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Introduction

The petitioner does not ask the Court to decide who gets custody and who gets the house, nor to decide the merits of the "facts" chosen without regard for the truth by the Maine Judiciary. I seek review of the process and practices used and the right of lawyers and judges to retaliate against those who make public and or attempt prosecute their gross misconduct.

The needless pain inflicted on our children by incompetent, unethical and unlawful judges; the total elimination of my ability to have anything to say in the rearing of my children; past, ongoing and future financial destruction; destruction of my good name and reputation and future earnings capacity and the emotional damage continually inflicted by the ceaseless inhumane and unlawful treatment at the hands of Maine judges and lawyers is a result of my refusal to remain silent about the rampant corruption in those courts.

In my instance and that of many others of which I am aware, the divorce lawyers of Maine have fostered as much hate and discontent as possible in divorce litigations for the sole reason of building fees. It would be impossible for them to get away with this conduct if the courts did not turn a blind eye and if the regulatory agencies did not condone and support this conduct. The same holds true for the conduct of the judiciary. Those responsible for regulating the conduct and/or re-appointing these persons are also impotent by design. Law enforcement agencies, including the Maine Attorney General, will not prosecute felony crimes by attorneys in

Maine unless the Board of Overseers of the Bar finds fault. Of course, they never do, and proudly boast that their goal is to find a reason to dismiss [Appendix, COJR and BOOB] In fact, even when I presented proof of an attorney making a known false statement in an exparte motion and known false statements in a fee affidavit, they found no wrong doing and threatened me if I discussed the matter. Maine lawyers have a history of impotent self regulation. They were broken up after considerable noise in 1978 and it only took until 1981 before they were again under attack for placing lawyers above the law. Nothing has changed.

Even the Federal Justice Department's Office of Public Corruption will not act to curb the practices. Even the State and Federal Judiciary would not respond or act. Furthermore, everyone involved in violating rights in the courtroom is immune regardless of the circumstances (and of the law).

Maine is no longer a nation "of the people, by the people and for the people". It has become a state "of the lawyers, by the lawyers and for the lawyers". Liberty and Justice for all is a joke. Truth has ceased to be a requirement of the process for judges, lawyers and parties. While the lawyers, judges, executive and law enforcement agencies of Maine support the misconduct that results in the destruction of families in such a horrific process that survival of the family unit in any form is impossible, they take no responsibility for the problem or the violence that often ensues nor for the long term impact on society. While the nation struggles with the serious problem of absentee fathers, Maine lawyers and judges act every day to drive fathers from the family unit, simply for fees.

Just as I was forced to put nine years of judicial misconduct into fifty pages of brief, I am now expected to tell a coherent story in 30 pages of much smaller size.

Petitioner asks the Court to define once and for all what "Due Process" and "judicial discretion" means in a domestic relations court, as well as what Constitutional and Bill of Rights Guarantees regarding personal and property rights survive at the state domestic relations courts and appeals court levels. Once defined, Petitioner asks the Court to look at the circumstances in the instant matters and determine if any violations of even that limited subset of rights exist. Petitioner also asks the Court to define specifically, what a true safety net against the abuses of immunity consists of, as well as how those repeatedly offended can prove the net fails by design, and thus immunity should not apply.

Statement of Case[1]

I have been trying to get a divorce so that I could move on with my life since 1991 when I first filed for divorce. I still do not have a divorce, nearly ten years later. When I specifically asked for a final judgment, Churchill and her lawyer refused unless I gave up my rights to the appeal of the financial matters. Upon hearing this demand, District Judge Field denied my request, this after specifically stating weeks before in his typical sarcastic tone that he would "grant it. Don't even write out a motion, put your request on a napkin or piece of paper and I will grant it". His rationale for denial was "dower rights". Dower rights

[1] Only the facts regarding the conduct of the courts, lawyers and parties as relate to fair trial and equal protection.

were abolished in Maine long ago. I had been fortunate to find a wonderful person to share the rest of my life. After five years of waiting and endless court sponsored harassment, she finally cut her losses and moved on. Today, nearly ten years later, I am still married to this sociopath and have been stripped of all rights relating to the minor children and everything I ever owned. What Field did not give her directly, he arranged for her to obtain fraudulently by processing a quit claim deed he held in escrow by him, until the completion of the appeal? As evidenced, grand theft was enabled and tolerated by Judge Field, The Maine Superior Courts and the Lincoln County District Attorney also refused to act. Because several of those involved are lawyers and judges, the Maine Supreme Judicial Court refused to deal with the issue, even when directly asked on Motion to Reconsider. In so doing, Maine's highest court participated in covering up grand theft, perjury, criminal tampering with witnesses, other crimes and gross judicial and lawyer misconduct.

Truth was never a requirement of Judge Field's court, nor any appeals court or regulatory/law enforcement agency. I have added pages with transcript references to the Appendix [Perjury Condoned by Field and the Appeals Process] so that the full nature of his court could be examined.

The Constitution guarantees the right to life, liberty and the pursuit of happiness. I have no liberty because I am still married to a proven sociopath nine years after starting the divorce action. I cannot pursue happiness because I cannot remarry, simply because I would not submit to judicial and lawyer extortion demands that I give up my rights to appeal in order to enjoy that life. The Constitution also guarantees speedy trial. Nine years and

counting cannot be considered speedy. Unless the corruption experienced in this matter is a national disaster and not simply a state issue, the full faith and credit

At the onset of this litigation I was primary caregiver and not primary provider by agreement of the parties noted, because of the uniqueness, in several news articles interviewing the Defendant, including the Boston Globe. One of the newspaper reporters that wrote one of these articles testified at trial. Within ten days the Defendant, highway commissioner in the town where the witness lived, had a moat dug around her property so that rainwater from several lots and streets ran onto her property, Appendix, Affidavit of Blagden.

This was not the first or only tampering. A selectman in the town was placed on our witness list. Churchill threatened this man in front of the entire board and then attempted to get the board to prevent his testimony. The witness testified anyway, and within two days of his testimony Churchill began a public censure which she herself negotiated with town lawyers and served on him, without fair hearing or notification at a public meeting at which Churchill had summoned members of the media to complete the destruction of this person Appendix, Affidavit of Lorbeski.

At trial, my lawyer tried to get Field to halt the tampering and retaliating. Field continually refused. When he was eventually forced to do so, he told DA Williams that "the allegations had no merit" (Appendix, Letter, Maine AG to BOOB). By what was supposed to be serendipity, this DA turned the case over to the Lincoln County DA, Rushlau, who had a long-term relationship with Churchill. Churchill was Rushlau's prime witness in multiple

prosecutions of a local malcontent who had embarrassed Rushlau with a Supreme Court reversal of a poorly conceived prosecution (Appendix, Letter, Maine AG to BOOB). Rushlau completed the scuttling of the investigation. When I asked the Maine Attorney General to get involved he refused. When one of the persons successfully attacked went to the Maine Attorney General, he too was ignored.

Field never caused the threats and intimidation to cease, which caused several witnesses to refuse to cooperate for fear. Churchill also denied having anything to do with any of the threats or retaliation. Churchill threatened another witness, driving up to her house and repeatedly stating through the car window "what goes around, comes around" (Appendix, Affidavit of Kasper). A few days later the town police chief, who worked for Churchill, came up to her home and also made threatening statements.

Two years after Field condoned and aided and abetted these serious crimes I filed a two inch thick motion that contained four affidavits from people threatened and retaliated against, and hundreds of documents obtained by the freedom of access laws. All of these documents proved that Churchill lied in court when she said she was not involved, and, in fact, orchestrated much of the retaliation within hours of leaving the courthouse. Field denied the motion without hearing, again shutting the door on felony crimes of tampering and perjury. His actions destroyed the reputation of the court in the neighborhood because he refused to protect those called to testify. It took nearly two years to get some of these individuals to agree to write the affidavits. The proof was uncontroverted, and yet the Maine Attorney General,

District Attorney Rushlau and Judge Field would not act to halt or punish the conduct. A complaint to the Maine Committee on Judicial Responsibility found no wrongdoing. A lawsuit against him found him immune. Contacting the Maine Standing Judiciary Committee resulted in no response. Contacting the governor, who, in Maine, can single handedly fire a judge, resulted in no response.

The litigation began with a hearing at which Judge Westcott presided. It was learned years after the onset of the litigation that Westcott had a relationship with Churchill that was personal, business and included fiduciary issues.

At this hearing, unrecorded, Westcott issued an order pending that through me out of the house with no income and no support and ordered me to return to the home every day to perform daycare for free. He denied a motion to reconsider stating that no injustice resulted. Federal law and specific Maine law prohibits treating a male any differently than you would a female. No female in any state would have been treated in this manner. He then turned the baton over to Field. A complaint to the Committee on Judicial Responsibility about Westcott was dismissed. A lawsuit against Westcott was dismissed because he is immune. Attempts to learn the exact start of the relationship in Federal Court were denied by Justice Hornsby, a former member of the Maine Supreme Judicial Court. Westcott has since been promoted to Chief Judge of the District Court. The only thing I managed to accomplish by complaining was to have the Chief Justice of the Maine Supreme Judicial Court change Bar rules to prevent a corrupt judge or justice from being disbarred if they were unfortunate enough to be kicked off the bench.

Judge Field routinely condoned perjury, known false statements, abuse of process and contempt of standing orders by Churchill and her lawyer. Churchill lied so much in affidavits and on the witness stand that she was always caught in material lies and misrepresentations. At these times, Field would either prevent any additional discovery to prove the perjury, ask Churchill leading questions to build a reason for her perjury, deny the admission of documents that proved she lied and, when he could not keep the matter out of the record, simply refused to act on it.

He continued to ignore the lies and misrepresentations of the lawyer even after my attorney wrote him a seven-page document entitled "Mischaracterizations of Trial Issues in Attorney Scheffee's Fee Affidavit"[2] (Appendix, Mischaracterizations of Trial Issues). My attorney gave me a copy and told me to send it to the Board of Overseers of the Bar, which I did, and they found no wrongdoing.

He repeatedly denied motions without hearings, thus preventing the material from becoming part of the record. When he held hearings on something about which he intended to break the rules he simply refused to have them recorded, even over objection.

Churchill denied, interfered in and attempted to control every minute of my visitation with the minor children. I presented hundreds of telephone calls that went to the answering machine, even during the specific times ordered by the court. The children were told not to answer the phone because "It was my business calling". She harassed

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[2] This document also detailed the abuse of civil process and discovery evasions condoned by Field and the entire Maine Judiciary and Legal community.

every day care provider until they asked me to remove the children. She would tell me I could not have the children while I stood in the doorway, having driven 75 miles, with the crying children standing right next to her. Field knew all these things and refused to take any action to halt the contempt. After five years, he finally found her in contempt but specifically refused to do anything to punish the conduct or deter further violations. The same day, Churchill violated again. In any just court, this would have constituted criminal contempt, but not in Field's court.

When I presented drawings of our 8-year-old that medical professionals found to be very alarming, Field shouted, "these are meaningless", refused to allow them to be entered into the record and confiscated them.

Churchill continually dragged the children to therapists in secret, denying any such therapy was underway until exposed. Each time she claimed the children experienced emotional problems after or because of visitation. Each time these therapists were not only unable to substantiate the claims, but actually refuted them. In one instance, the records of the therapist stated that Robin, our son, threatened to kill himself and Churchill, a bisexual, admitted she had been too hard on him ***"because he was a boy, and he looked like his father".*** Judge Field did nothing when he learned of this fact. My children have stated they no longer want to live with the mother and have valid reasons for this desire to change physical custody. I do not dare attempt to have this matter heard before the court because Field would simply use it for another venue to punish me, and indirectly, the minor children. Thus, by his misconduct, Field prevents my children from seeking redress in the courts.

He issued a payroll withholding order without hearing and contrary to the facts. He refused for years to issue an order to have 1500.00 that he took from me by this order in violation of the law. When after two years, he did issue the order the DHS refused to comply and he did nothing about that. In fact, the DHS admitted they refused to obey the order and the appeals process found no wrong doing with that.

Churchill was forever filing known false complaints with the court and the DHS. I violation of one more order Field never enforced, Churchill contracted with the DHS to collect my support stating I was behind. The DHS, without any attempt to validate the allegation with me, sent my employer a letter stating I was a dead-beat father and asking them for the information needed to start taking payments from my paycheck. When the investigation was concluded, it was determined that Churchill lied about the failure to pay, and that I was really ahead in my payments. In addition, the order that Field wrote said that no action could be taken until I was a full month behind. The DHS nor Field nor the appeals process cared about these lies.

Her lies to the DHS continued, each time the DHS repeated the known false statements to my employers as if it were a proven fact. This was true even AFTER she was proven to be a pathological liar. Each time it was proven false they refused to relate that truth to my employer. They repeatedly stated "We are just bill collectors" as an excuse for this violation of law.

I changed jobs and my present employer and myself tried to get the DHS representative to change my withholding to the new employer. At the time, the DHS was under court order to restore 1500.00 to me. The withholding never

took place and I assumed this was the method they chose to repay me (as they had done so in the past). Later I was served with a notice of debt that specified an amount due. I wrote to the commissioner stating the facts and complaining about the representative's incompetence. I traveled to the DHS office on the date specified and was handed a letter dated the day before stating that the hearing was called off and a new notice of debt would be issued. They let me travel there for nothing. When the new notice of debt arrived it was substantially higher, due to the creative accounting of the representative whom I had complained about. At the hearing on that matter I demanded Churchill be there. She did not show up and she stated under oath that she was told she could come, not that she was ordered to come. In addition, the DHS employee repeatedly lied and misrepresented to the hearing officer, who was all too happy to take her statements at full value. The hearing office also refused to allow information to be entered into the record that would embarrass the DHS or its employees. As was the case at EVERY DHS HEARING, I demanded Churchill be there, they would say she would be there, and she would never show. The hearings went on anyway. After this last violation of laws, rights and morals, Churchill stated on the record that her presence was not demanded, she was invited to attend. As usual, the appeals process pretends the violations of rights to be faced by the accuser and to have witness in ones behalf never occurred, that the DHS agents did not lie and/or misrepresent, and that the facts obtained from the liars was sufficient. It also ignored the fact that misrepresentation and accounting gimmicks were used to increase the support in retaliation for blowing the whistle on one of many incompetent hacks in the DHS. In short, once again, they found neither wrongdoing nor violation of rights. Again, the only way that no violation

of rights could have taken place is if no rights ever existed (which is the case). They keep to the standard quote "There was sufficient facts in the record...." They never deal with the veracity of those who provided the "facts". The facts fit the goal, retaliation, which was all that mattered.

Truth has ceased to be a part of the legal process. Churchill's lawyer lied as evidenced elsewhere herein, but she also lied to the Board of Overseers of the Bar, filed known misstatements in Exparte Motions in other courts involving me. She did everything she could to foster hate and discontent. One prime example was the lies she stated to the guardian before I ever had a chance to meet her. Under oath, Churchill testified that she never made those statements to her attorney, never told her attorney to write the letter and never even knew about the letter. The impact on the guardian was such that her report was so biased against me it took two professional witnesses on my part, the guardian's own discredited testimony and the testimony of another professional the guardian called to bolster her report (who was also totally discredited and later barred from performing guardian activities, not as a result of this matter).

I tried every manner possible to get relief from the corruption in the District Court. At each step of the way regulators and law enforcement agencies, all manned by lawyers, not only refused to act, but allowed those complained about to use the dismissal as proof they were exonerated and the charges false. The guilty then used the dismissals to defame me and paint me as a crazy.

When I would not be threatened or dissuaded by repeated dismissals of valid complaints, the guilty lawyer and judge

simply issued a court order preventing me from complaining without the signature of a lawyer AND the judge. He took this action without allowing any questioning of witnesses, nor proof of any frivolous complaint. *IN FACT, I HAVE NEVER FILED A FRIVOLOUS OR FALSE COMPLAINT. THIS ORDER WAS THE ONLY WAY THE CORRUPT JUDGE COULD STOP MY PROSECUTION OF HIS CORRUPT, ILLEGAL, IMMORAL ACTS!* Of course, the required permission was routinely denied and requests for facts and attempts to appeal thwarted because of the process I was required to follow to get permission "does not follow any process of law". My right to seek redress and freedom of speech were stripped from me. When I sought permission to complain about the fact that an attorney had lied in an exparte motion to the court to the Board of Overseers of the Bar, facts in evidence and beyond question, that right was denied stating "this is one of those things the judge had in mind when he issued the order against you". When I sought permission from Perkins he denied misquoting the order and denying my right to file forever. When his misrepresentation was pointed out he basically said so what, you still do not get to file. When I appealed his denial, Justice Crowley denied my right to appeal. When I asked Field for permission to file legitimate complaints he denied as well. [Appendix, Spicker Order]

Churchill was forever using protective orders to punish those who caused her problems. I was subpoenaed to testify at a trial of a local malcontent, who was arrested for violation of a protective order issued by, you guessed it, Judge Field. Churchill got the order in the afternoon and I heard her discussing with a selectman how they would entrap the malcontent that very night and have him arrested. They worked out the entire plan. The next day, I

heard her on the phone bragging to the Chief of Police about how well the plan had worked. The day before I was to testify at that trial, Churchill left a Complaint for Protection from Abuse on the kids car seat where she knew I would see it. That evening, as I sat on my porch with some friends, the Chief of Police drove by several times, each time slowing down to leer at me. I testified anyway, and Churchill filed the protective order. Field, in an unrecorded hearing, issued the protective order, which has forever destroyed my reputation. He did so where no facts of abuse were presented. When I sought his "notes" on this matter, the Maine Attorney General filed a motion trying to prevent them from being turned over, this even though Field had "incorporated these notes in the record. Thus, even the state's highest law enforcement officer acted to obstruct justice on behalf of a corrupt judge and lawyer. It simply never stops. In my appeal of this order, delayed by the courts, the Maine Supreme Court stated: "Vogt's appeal from the protection from abuse order that has expired is moot, see Sordyl v. Sordyl, 1997 ME 87, 5, 692 A.2d 1386, 1387, and there are no collateral consequences resulting from the order sufficient to justify an exception to the mootness doctrine."

They made this statement knowing that I must now put the fact that I was subject of a protection from abuse order on every job application for the rest of my life. Simply more retaliation.

An arbitrator was assigned to this case. At the hearing, his authority was limited to visitation and support. At the second hearing he started negotiating away my rights to appeal the financial matters. When I challenged his right to do so my attorney (who was owed 40,000.00) stated that he did. I had to agree. Later, I went to her office and

demanded a copy of the order. In fact, she had lied. I fired her and filed a motion to reconsider and to set aside. At the hearing, both the lawyer and the arbitrator, who would be guilty of misconduct and perjury, lied. Regardless, there was enough hard documented evidence to leave reasonable doubt. Field of course, denied (this after stating that if the arbitrator changed the financial arrangements he would "put you back where you were". Field made me sign a quit claim deed for the property, which he held in escrow pending appeal. I appealed. Field gave the deed to Churchill and she promptly filed it, stealing the $200,000.00 property with no compensation at all. Field, Rushlau, Perkins and the Governor all refused to do anything about it. The Maine Supreme Judicial Court refused to deal with the theft, even after being reminded again in the Motion to reconsider. In short, they found nothing wrong with this unlawful taking of property enabled by a judge and lawyer. How could they? It would mean putting a judge and a high-ranking member of the Maine Bar Association in jail. Once again, a conspiracy to violate my rights to seek redress and due process are violated by a group of individuals at all levels of the Maine legal organization. NOT ONE LAWYER, JUDGE, LAW ENFORCEMENT AGENT, GOVERNMENT EXECUTIVE NOR THE ATTORNEY GENERAL WOULD DO ANYTHING ABOUT THIS THEFT! WHY?

I made a simple request to Justice Souter to allow me to wait 60 days in order that I might join two appeals in this writ. The purpose being they involved the same people and practices, just a broader base of state employees violating rights under color of law and conspiring to do so. Justice Souter could not see his way clear to grant that simple, harmless request.

I could go on and on, but I know it really does not matter. I firmly believe the divorce industry does whatever it wants because the Highest Court in the land will do nothing to halt the gravy train. Regardless, my arguments are as follows:

Argument

Issue 1

Everyone entering any court at any level in the United States has the full protection and rights granted by the Constitution and Bill of Rights. No where in the Constitution does it say or imply otherwise.

I concede that "due process" in a divorce need not rise to that required in criminal cases. At the same time, whatever remains of due process must include the following rights: to be faced by the accuser; to have witnesses in ones behalf; truthful testimony; to an unbiased tribunal; to the same rights and privileges available in other states[3]; to have the record preserved for appeal; to have a reasonable limit on judicial abuse of discretion; to a speedy trial; to life, liberty, including rights to enjoy children and not have them used as a weapon against you by a vindictive spouse and willing court; freedom of speech; the right to seek redress; equality before the law; freedom from misconduct and or conspiracy of any kind by those who profit from the grief; safety from, and redress from misconduct by anyone involved and the right to own property and not have it

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[3] Unless the Highest Court in the nation wants to admit that the conduct in Maine reflects that of every State in the Union, the 14 Amendment guarantees regarding enjoying the rights of those in all states applies.

taken from you by any act of misconduct; access to fair appeal if the state provides appeal. Anything less results in a process that is outside the law. If divorce is outside the law, why do we pay billions to lawyers for dissolution.

Given the district court judge in this case not only openly tolerated criminal threats and retaliation against the witnesses I brought to trial, but took steps to scuttle an investigation when it was started, my constitutional rights to have witnesses testify in my behalf and be faced by my accuser have been violated and continue to be violated. Given that District Attorney Rushlau, who was from another County from that in which the crimes were committed, took actions to gain custody of the prosecution and then scuttled it, allowing the crimes of one of his prime witnesses to go unpunished and the citizens to continue living in fear, my rights, and those called to testify were also violated. Given the Maine Attorney General willingly participated in the cover-up of this crime, my rights to equal protection and to seek redress were violated, as well as those of the victims. Given more than one person in more than one aspect of the law acted together to accomplish this aiding and abetting of a felony crime, a conspiracy under color of law also existed. Given that no agency or court in the State level and no agency in the Federal level would act to curb this conduct, and the courts actually condoned this conduct, my rights to seek redress were violated. This was an organized conspiracy.

The last of five motions for recusal are attached in the appendix [Appendix, Fifth Motion for Recusal]. This does not include all the acts judge Field orchestrated, abetted or participated in with the full approval of the entire Maine Executive, legislative, complete judicial and legal community. His last statement, contained in the issues, is

not only an example of arrogance and stupidity, but of foreknowledge that he would never be held accountable in any venue because of the existence of an organized group of judicial thugs who would protect him and destroy any detractor. Such organizations and failure of law cannot be tolerated in a civilized society.

My rights in my home were taken from me because Field gave a deed, obtained under threat of contempt, supposedly held in escrow, to Churchill who promptly stole the rights without paying a dime. The circumstances leading up to this final act is consistent with Maine Jurist Prudence, morals and ethics, and clearly violate the 14th Amendment. As evidenced elsewhere, nowhere in the judicial or law enforcement process was anyone found to prosecute this theft of more than $80,000.00. That the Governor, Maine Supreme Judicial Court, District Court Judge Field, CMO Kidman, Justice Perkins and the District Attorney knew and not only refused to act, but prevented me access to the law is simply one more demonstration of a conspiracy to violate rights under color of law as well as a clear statement of how far the Maine Judiciary will go to destroy someone who takes exception to the corruption that is rampant within.

That both Westcott and Field had relationships with Churchill, which included personal and granting of protective orders, and then went on to violate Maine laws and civil rights in her behalf, including aiding and abetting perjury, contempt of court and abuse of civil process, my rights to fair trial, equal protection of the law and civil rights were violated. Given they must have worked together to carry off these acts (why would Churchill continue breaking laws and violating orders if it were not for foreknowledge that she would never be held

accountable, which she has not), a conspiracy under color of law exist.

Refusing to record hearings, such as was the case in the Protection from Abuse Hearing, deliberately prevented me from having a record on appeal.

"An impecunious party, whether found guilty of a felony or conduct only "quasi criminal in nature," *id.*, at 196, "cannot be denied a record of sufficient completeness to permit proper appellate consideration of his claims," *id.*, at 198. I submit that wearing the falsely asserted label of wife abuser is more a life long damaging label than "quasi criminal" conduct.

That the Maine Supreme Judicial Court openly stated that NO VIOLATIONS OF DUE PROCESS RIGHTS OCCURRED testifies to the depths of moral depravity and contempt for the Constitution that exists at that level. If no violation existed, it is because no rights exist, not because there were no violations.

Issue 2

There is no safety net in Maine to protect the innocent from the abuses of the greedy lawyers and all to willing courts.

The reputation of the Board of Overseers of the Bar is so negative they had to hire a "Visiting Chairperson" to review complaints. When that person was told the truth in this matter she stated that, if the allegations were true, misconduct had occurred and the complaint should not have been dismissed. She said she would look into it. I never heard from that person again. When I subpoenaed this person to court the Board of Overseers of the Bar

vehemently objected. If they had nothing to hide, they would not need to avoid the court. If her testimony would have proved me a crazy hack, it would have been to their benefit. In fact, the opposite was true. The Bar Counsel openly states in public that his purpose is to prove the complaints are without merit. They have repeatedly threatened me should I speak out about their findings, conduct and practices.

The committee on judicial responsibility never finds wrongdoing either. In my complaint to them, anything they could not dismiss as being something that I would obtain relief from on appeal (a cruel joke as this never happens when judicial misconduct is involved, and, besides, how does the fact that I might get relief on appeal justify the conduct or make it any less a violation?), they dismiss as being a disagreement with the order of a judge, or when they have exhausted every other possibility, they say "one instance does not justify sanctions". Totality of conduct is a concept they ignore. In addition, they warned me about making anything about their conduct public knowledge [Appendix, COJR and BOOB]

The State and Federal courts will not process a complaint about a judge or lawyer without scuttling it either. In fact, in my case, after being told by the Superior Court Justice who heard the matter exactly what issues to raise on appeal, the bastions of judicial prowess in the Maine Supreme Judicial Court fined me thousands of dollars for filing a frivolous appeal. The only thing that made it frivolous was the fact that it involved corrupt judges and lawyers.

When I told the Board of Overseers of the Bar that I intended to publish the documents in my complaint on the

Internet they threatened me with prosecution. If you recall, New Hampshire did exactly that in the case of Lawyer Fairbanks, who stole hundreds of thousands from clients and was appointed to the bench while those complaints were in process. Those who threatened to go public were threatened with jail. Even after Fairbanks died, the corrupt lawyers in New Hampshire effectively prevented the facts from coming out. Now, get more Supreme Court justices are under fire for misconduct and one has resigned. As late as last week, one New Hampshire Supreme Court Justice resigned in the wake of allegations he fixed cases for a seat on the Circuit Court and the Chief Justice is under investigation as well. Obviously, a paucity of morals, ethics and respect for the law are not just a problem in Maine.

The Maine Attorney General, another lawyer appointed by lawyers, will not prosecute lawyers for crimes until the Board of Overseers finds fault. In fact, the Attorney General will, and has, scuttled investigations or refused to undertake them if they involved corruption by a lawyer or crony of the state, such as Churchill. This is true even when the public seeks their assistance. The Maine Attorney General represents the corrupt politicians, lawyers and judges, not the public. Again, another doorway to redress is slammed shut.

I took the abuses to federal court, where Justice Hornsby, a former member of the Maine Supreme Judicial Court, dismissed every count and action based on immunity, regardless of the circumstances, and prevented discovery about the start date of Churchill's relationship with Judge Westcott and Field. Westcott has been quoted in news

articles as getting so angry on the bench he must leave to calm down.[4]

There is no safety net in Maine, and immunity should not be granted to anyone until it can be proved that those responsible for curbing and punishing abuse are doing that. The court needs to define what an effective safety net really is. Having lawyers and friends selected by lawyers regulating lawyers does not, and will not work in Maine.

That the regulatory agencies and law enforcement agencies are impotent by design when it comes to prosecuting and punishing judicial or lawyer misconduct, and these people are immune in the courts as well, violates my rights to seek redress, equal treatment under the law, corrupts and tarnishes the legal community in general and destroys the faith and confidence of the population in the legal process. Further that they act in concert to prevent any punishment much less an acknowledgement of wrongdoing, a conspiracy to violate civil rights under color of law exists. That these individuals can commit crimes with complete immunity violates the titles of nobility clauses because they have rights and privileges that the rest of the population does not enjoy.

Issue 3

There was nothing wrong with the standard used for abuse of discretion that existed for so many years. It was easy to understand and apply. The use of "boiler plate"

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[4] Westcott was recently named Chief Judge of the District Court. Is he the best they could find?

statements by the judiciary whose sole purpose is to enable the appeals process to avoid a finding of abuse of discretion or failure to consider all the facts is despicable, violates the right to fair and just appeal and reflects yet again, the failing morals and ethics of our courts.

As the morals, ethics and competence of the judges in America decreases, so do the violations of laws and rights and abuses of discretion. The increase in appeals that this sad condition brings with it has been dealt with in Maine by lowering the standards for misconduct and abuse of discretion to the point that no act seems to qualify. Once again, "judicial economy" only a factor because of the abuses of judges and lawyers, is used for an excuse to deny rights and violate laws, canon and bar rules.

One cannot possibly view the conduct, not only of Field and the lawyers involved, but that of the appeal courts as well, and not come to the conclusion that there are few, if any, acts of lawyer or judicial misconduct that would rise to Maine's definition of abuse of discretion.

Whatever happened to the definition of judicial discretion that served for more than a hundred years: "Reasonable men, viewing the same facts, would not come to the same conclusion". Instead, the Maine Courts now replace justice and equity requirements with "phraseology" designed to remove the requirement for reason and logic. For example: "There was sufficient facts to support the conclusion in the record". These facts could have been proven false or came, in contrast to those of professional witnesses, from a proven liar. It does not matter if the reputation of a judge or lawyer is involved. Or, "I have considered all the facts" when in fact they have not, but this statement eliminates the ability to appeal because of a

failure to address the issues. Or how about "you simply disagree with the conclusion of a judge."

As evidenced, the abuses were not limited to two district court judges who knew Churchill and always refused to step down. They included Superior and Supreme Court justices as well.

Field did not run a courtroom; he ran a circus whose only goal was to punish me. Thanks to the organization of trial lawyers, Field was able to get every other judge and justice to go along with the persecution.

The abuses of the judges and justices involved violated my rights to fair trial and equal protection. That they acted in concert, and that Field would admit on the record that they would punish me, further demonstrates the magnitude of the contempt for basic rights and laws by every facet of the Maine Courts. Unless every other state in the Union has as broad a definition, my rights to the privileges and rights enjoyed by the citizens of the several states has also been violated.

The court must also consider the reason for the endless violations: to punish me because I complained about the abuses.

Issue 4

The persecution and retaliation of those who take exception to the crimes and misconduct of the lawyers of America, regardless which side of the bench they practice, cannot be condoned in a free, civilized society. Allowing those responsible for making, enforcing and profiting from the law immune from redress for grievances creates two

legal classes of society and places too much pressure on the morals of these individuals. The impact is already visible all over the nation. Neither can the courts sit by idly and watch the rights of Pro Se parties abused or violated.

I readily admit that the court has no requirement to prosecute the case of a Pro Se party. At the same time, they cannot allow the rights of those individuals to be trampled, nor should they be allowed to trample on those rights themselves. Too often in the last ten years I heard judges I called on the carpet for allowing my rights to be violated, or personally violating those rights themselves state in their defense: *"I fulfilled my responsibilities as a judge!"* How does fostering, aiding and abetting or participating in violation of rights and laws 'fulfill' any responsibility as a judge. Without exception, each judge knew he would never be held accountable. Without exception, none ever were.

I incorporate all the facts within as support for this issue. In addition, I remind the court of Field's comments, borne out by the appeals process at all levels:

> **"and because of his own—all this crap he insists on filing he has put himself, frankly, behind the eight ball with regards to the justice system (page 12, ln 4)"**

How can this person be considered unbiased? You may also review the fourth motion for recusal, which he denied stating "this is a small town".

The violations of civil and constitutional rights already listed elsewhere apply to this issue as well. I am entitled

to a fair and unbiased judge. No reasonable person could look at the totality of conduct and come to that conclusion. No moral, ethical, law abiding member of any appeal panel could look at this conduct and not find it reprehensible. And yet, they all did and found nothing wrong. THE ONLY WAY MY DUE PROCESS RIGHTS COULD NOT HAVE BEEN VIOLATED IS IF I HAVE NO DUE PROCESS RIGHTS IN MAINE. In fact, that is an accurate description of the process and practices.

Issue 5

The Maine courts are indeed bound by the Declaration of Human Rights. That they willingly violate those rights comes as no surprise, given they reflect many of the same Civil and Constitutional Rights openly violated on a routine basis by all levels of the Maine judiciary and legal community today. I have filed a Complaint with the High Commissioner on Human Rights in Geneva. It speaks for itself. If nothing else, this act will get the conduct of the lawyers viewed from outside.

This writ should be granted because it is a matter of grave importance to the salvation of the family unit and the success of society in the future, as well as the restoration of the rule of law and standards of ethics in our legal community. By refusing to grant this Writ, the High Court will be condoning the violations of law, Canon, Bar Rules and of human and civil rights that occur below and the destruction of the children, families, dissidents and Pro Se parties that necessarily follow. "Judicial Economy"

cannot be an excuse for abdication of moral responsibility. Retaliation against those who complain

about the abuses of judges and lawyers is simply another form of witness tampering: anyone but a lawyer or judge would be in jail.

Lawyers, regardless of which side of the bench they practice or organization to which they belong, cannot retaliate against those who complaint about the violations of law, canon, bar rules and rights they or their peers commit. Failure to deal with this issue will simply prove that "Liberty and Justice for All" is a thing of the past. Truth as a requirement of the judicial process must be re-established or our system is nothing more than one where the biggest liar wins and society will pay for the damage the hate generated by such a practice will create. If anyone can successfully deny the rights of another, none of us have any rights.

This court must define due process rights for domestic relations matters and pro se parties, define what constitutes a safety net against abuses of immunity and provide redress for those injured when the net fails to

operate or is impotent by design. Lawyers do not need immunity. A simple practice of loser pays will be enough deterrent against frivolous actions.

This court must order the removal of all secrecy provisions on any and all judicial and lawyer conduct review organizations. There can be no exceptions. This court must uphold the rights of all citizens to speak out about judicial and lawyer corruption without fear of retaliation. Such misconduct is simply witness tampering by another name.

This court must stop the DHS, a court, not a "COLLECTION AGENCY" from publishing allegations until they are proven. It must also require the DHS to cease and desist attacking whistleblowers. It must also require the DHS to adhere to all due process, equal protection and fair trial requirements of the Constitution and to comply with all lawful orders of the court, not just those which increase support.

Respectfully submitted this 19th Day of April, 2000

James W. Vogt
Petitioner Pro Se
170 Main Street, Apt 15
Springvale, ME 04083
207-490-9012

Appendix

Orders Appealed

Decision, Lin-99-396

This is a typeset copy of the order!

MAINE SUPREME JUDICIAL COURT
Reporter of Decisions
Decision No. Mem 00-6
Docket No. Lin-99-396

James W. Vogt
V
Nancy J. Churchill

Submitted on briefs November 30, 1999, Decided January 24, 2000.

Panel: WATHEN, CLIFFORD, RUDMAN, DANA, SAUFLEY and CALKINS

MEMORANDUM OF DECISION

James W. Vogt appeals from a judgment of the Superior Court (Lincoln County, Perkins, A.R.J.) affirming a divorce judgment and other orders entered in the District Court (Wiscasset, Field, J). Contrary to the contentions of Vogt, the court did not err, nor did it act outside the bounds of its discretion in determining that the primary residence of the children be with Churchill: see Harmon v Emerson, 425 A.2d 978, 983 (Me. 1981); in determining the amount to be paid for child support: see Harvey v Robinson, 655, A.2d 215, 217 (Me 1995); Powell v Powell, 645 A.2d 622, 624-25 (Me 1994); in not ordering

that the parental rights regarding the children be equally shared, se Lee v Lee, 595 A.2d 408, 412 (Me 1991); see also 19A-MRSA Section 1653(3)(H), (I), (J) (1998)[5] and in its determinations and division of marital property, see Ramsdell v. Ramsdell, 1997, ME 14 8, 688 A.2d 918, 921; see also Dubord v. Dubord, 1997 ME 7, 5, 687 A.2d 647, 648. The court acted within its discretion in orders requiring Vogt to pay toward the attorney fees incurred by Churchill. See Gray v Gray, 609, A.2d 694, 699 (ME 1992); Eastman v. Eastman-Veres, 1997 ME 26, 8, 690 A.2d 494, 496;; 19-A MRSA Section 4007(1)(L) (1998)[4] Vogt's appeal from the protection from abuse order that has expired is moot, see Sordyl v. Sordyl, 1997 ME 87, 5, 692 A.2d 1386, 1387, and there are no collateral consequences resulting from the order sufficient to justify an exception to the mootness doctrine, see id. 6, 692 A.2d at 1387-88.

The court acted within its discretion when it entered an order enjoining Vogt from filing complaints, pleadings or petitions against any individual involved in this litigation without the signature of a licensed attorney and the approval of a judge. See Spickler v Key Bank of Southern Maine, 618 A.2d 204, 207-08 (ME 1992) (Spickler I); see also Spickler v Dube, 644 A.2d 465, 469 (1994) (Spickler II). The court did not abuse its discretion in denying Vogt's motions for recusal and in declining to recuse. See State v. Lewis, 1998 ME 83 3, 711, A.2d 119, 121; State v Rameau, 685 A.2d 761, 763 (ME 1996); see also Huges v Black, 160 A.2d 113, 119 (Me 1960). Nor does the record disclose that any of Vogt's rights to due process were violated. See City of Auburn v Mandarelli, 320 A.2d 22, 29, ME 1974. Lastly, the court did not act outside its discretion in excluding from evidence 1970 hospital

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[5] which was passed into law four years after the fact

records pertaining to Churchill. See M.R. Evid 403. The entry is: Judgment Affirmed.

Denial of Motion to Reconsider – Lin-99-396

This is a typeset of the exact order!

MAINE SUPREME JUDICIAL COURT
Sitting as the Law Court

Decision No. Mem 00-6
Docket No. Lin-99-396

James W. Vogt
V **ORDER**
Nancy J. Churchill

Upon motion of James W. Vogt for reconsideration, it is ORDERED that the motion be, and hereby is, DENIED.

Dated: February 16, 2000

For the Court,
/s#Robert W. Clifford, Associate Justice"

Decision, Yor-99-525

This is a typeset of the exact order!

MAINE SUPREME JUDICIAL COURT
Reporter of Decisions
Decision No. Mem 00-47
Docket No. Yor-99-525

James W. Vogt
V

Commissioner, Department of Human Resources

Submitted on briefs March 17, 2000, Decided March 31, 2000.

Panel: WATHEN, CLIFFORD, RUDMAN, DANA, SAUFLEY and CALKINS

MEMORANDUM OF DECISION

James W. Vogt appeals from a judgment entered in the Superior Court (York County, Perkins, A.R.J) affirming the decision of a Department of Human Services hearing officer that established Vogt's net child support debt and net credit for his children's medical expenses for the period between August 13, 1993, and January 6th, 1998. Contrary to Mr. Vogt's contentions, the hearing officer did not abuse his discretion or commit an error of law. See Sabattus School Comm v. Dept of Educ., 644 A.2d 1380, 1382 (ME 1994). Moreover, substantial evidence supported the hearing officer's findings. See id. The entry is: Judgment affirmed.

Motions – Pleadings

Motion for Reconsideration

STATE OF MAINE
LINCOLN, SS

SUPREME JUDICIAL COURT
ACTING AS LAW COURT
DOCKET NO. LIN-99-396

JAMES W. VOGT, *

PLAINTIFF *
*
V. * APPEAL BRIEF
* DOCKET NO WIS-91-DV-123
* & WIS-92-PA-043
NANCY J. CHURCHILL,* SUPERIOR COURT CV-94 –
DEFENDANT * 110 & CV-94-111

Motion for Reconsideration

There isn't enough civil litigation in Maine to create the revenue the lawyers want. Non-contentious divorces do not generate big bucks. It has been obvious over the last nine years that the lawyers of Maine have made a conscious decision to destroy Maine families as a method of increasing revenue flow. It would be impossible for lawyers to foster as much hate and discontent without foreknowledge that the courts and regulatory agencies would turn a blind eye. It would be impossible for judges to go along with this wanton destruction of children and families if it were not for the foreknowledge that the high court would support their position as well. The decision rendered in this case comes as no surprise. At the same time, it certainly reaffirms to all the corrupt individuals involved in this nine-year debacle that no act, no matter how deviant, will be found unacceptable by your court.

Appellant will appeal to the US Supreme Court in hopes that a deeper respect for the Constitution and Bill of Rights exists at that level. I can do no more. At the same time, I do not intend to let Maine's highest court get away with ignoring the most serious issues in my appeal, that being violations of Maine and Federal laws by lawyers, judges and the defendant. The silence of the court on these issues is deafening. It appears that being unable to

distort the facts to fit case law as you have with the issues processed, you simply intend to hide your head in the sand and pretend the remaining violations never occurred.

This motion is not frivolous. It seeks to document for the people of Maine and the US Supreme Court, the attitude of the Maine Supreme Judicial Court regarding violation of laws by judges and lawyers and the defendant who just happen to have relationships with the judges, district attorney and attorney general. Appellant, James W. Vogt, pursuant to MRSP 76A(b) requests the court reconsider its decision in this matter for the following reasons:

1. The court failed to deal with the fact that Judge Field not only condoned witness tampering and retaliation by the defendant, but went on to personally scuttle the investigation of the District attorney (Admission of DA Anderson, record). As the court well knows, he did not stop there. More than a year later when hundreds of documents were obtained under the freedom of information act that proved the tampering and retaliation by the defendant, he again allowed this personal friend of his and Westcott's to escape any redress when he refused to hear the motion, allow anything into the record and dismissed it without response. Kindly explain how this conduct, certainly a violation under the civil rights act, as well as a conspiracy to violate under color of law and certainly a felony (aiding and abetting a felony) do not qualify under your definition of abuse of discretion, misconduct, or, had no bearing on the outcome of the case. What facts of law allow you to ignore the conduct, much less state by your silence that chasing witnesses away from a trial and allowing a friend of Westcott's and Field's to destroy these witnesses at will after they bravely testified anyway did not indicate prejudice, bias,

incompetence or misconduct on the part of your peer, Field. In the alternative, kindly site the case law you have created that makes this conduct by a judge appropriate, acceptable and within the limits of your definition of proper judicial discretion. Frankly, without having the facts, how can you possibly know if the tampering was material or not? Secondarily, does the High Court of Maine suggest that if someone is unsuccessful tampering and retaliating that the crime should be ignored?

2. The court failed to deal with the appeal of the order of the referee regarding the real estate and the subsequent theft of the marital property facilitated by Judge Field. Nor did it deal with the fact that Field, who gave a deed held in escrow to Churchill knowing full well what she would do with it, refused to do anything when informed of the theft he precipitated. Field, as you are all well aware, was not alone in his condoning grand theft. Justice Brennan and Perkins also found no problem with this conduct, and, quite obviously, neither did your court. Kindly explain what facts and findings rationalize your decision to ignore this issue and therefore, why judicially sponsored, aided and abetted grand theft is not a problem to this court, and by what facts and laws you ignore my appeal of the order of the referee. The fact that many prominent judges and attorneys are involved directly in the grand theft and conspiracy to violate civil rights isn't my problem, it is yours, theirs and the agencies that promoted them. If you did not openly condone such conduct perhaps some judges and lawyers might be less apt to practice same.

3. The court, other than demonstrating the statement was true with its decision, failed to deal with Field's "Eight-Ball" statement. Kindly indicate what facts and

findings you made that allow you to discount this statement and the nine years of judicial conduct that certainly proves he made the statement from a position of knowledge that it was a true picture of the courts and that he would not be held accountable for same. Certainly, that has been the case. In addition, kindly explain how your condoning of that conduct and affirming his decision does not make the court an accomplice in the violation of those several rights.

4. The court did not deal with the pervasive perjury and false defamation by the defendant and her attorney, including false sworn statements in affidavits. Certainly, those false statements can be found in the judgment and fee order. Exactly what case law does the court cite that perjury by the defendant and her attorney is not an issue in the case, especially when the same lies are found in documents signed by Field? Given that another lawyer (Potter, Mischaracterizations of Trial Issues in Scheffee's Fee Affidavit) wrote Field (and the Bar Counsel) about the lies in the fee affidavit, and Field still awarded them fees (which you willingly affirmed), did the other lawyer lie, or is that simply one more act that does not meet your standard for misconduct by lawyers or judges. In the alternative, what facts do you cite that prove neither lied, or that the facts obtained from these proven liars were not lies themselves?

5. You state in the decision that there is no collateral damage to me as a result of a Protection from Abuse order resulting from a deliberately non-recorded hearing and based on no factual proof of abuse. Kindly tell me how my not being considered for good jobs in the teaching profession because I must state that I was a dirt bag who was placed under such a protective order is not collateral

damage. Furthermore, kindly tell me what your standard of collateral damage is, as well as its basis in law, if deliberately destroying a man's reputation in perpetuity does not qualify?

6. Tell me how one of your judges can drag a divorce on for nine years, leaving me married to a proven sociopath, destroying my chances to move on with my life, and not have that fact alone cause you some sort of concern? Let us not forget his refusing to grant final judgment on the basis of "dower rights", although he would have done so had I given up my rights to appeal the financial issues (which he subsequently took care of himself by allowing Churchill to file a deed held in his possession and thus steal the property without paying a dime for it after I refused). What facts and findings and conclusions of law do you use to support your contention that nine years is a swift trial, and not an abuse of discretion or rights to life, liberty and the pursuit of happiness?

Wherefore, for all the above reasons, Plaintiff/Appellant requests the court reconsider its decision and respond to all the issues raised in the appeal, not just those you can sweep under the carpet with case law that simply fits the "facts" taken at face value from persons proven to be incapable of telling the truth in a court where screwing me was, and continues to be, justification for any deviant act.

Submitted this April 29, 2000

_____/s#James W. Vogt_____

James W. Vogt
Appellant Pro Se
170 Main St Apt 15
Springvale, ME 04083

Mischaracterizations of Trial Facts

Maine District Court, Wiscasset Maine
Vogt V Churchill
WIS-91-DIV-123
March 29, 1994

"MISCHARACTERIZATIONS OF TRIAL ISSUES IN ATTORNEY SCHEFFEE'S FEE AFFIDAVIT". (Filed by Attorney Potter in WIS-91-123-DIV and provided to Board of Overseers of the Bar)

"In her affidavit, Ms. Scheffee, basically states that she did not raise or litigate certain matters and therefore the high cost of the litigation is solely due to the Plaintiff's behavior.

1. In Paragraph four on Page seven of her affidavit, Ms. Scheffee states that she never contested the point that Plaintiff was a good father. However, at trial it was asserted by her and by the Defendant (Nancy Churchill) that. Jim only begrudgingly took care of the children; Jim was resentful of the childcare arrangements; Jim didn't really like taking care of the kids; Jim only became interested in the kids when he planned the divorce; and that Jim was of no help when the children were born; and that Jim never supported the children (Transcript Vol 3 at

53 and Vol 9 at 68, 69 and 76); and that Jim only became a house husband when Nancy ran out of money.

2. I Paragraphs two and four of her affidavit, Ms. Scheffee states that the legal fees arose on account of Plaintiff's frivolous reporting of the Defendant to various agencies. There is no indication of how this caused Defendant's fees to rise. Further, the Defendant admitted that she had forged Plaintiff's signatures to tax returns without his knowledge or consent and there was testimony from more than one witness at the trial that the family dog was being mistreated by the Defendant and that such mistreatment did not cease until the Humane Society was called. Further, there was testimony about sores on the children which occurred or worsened during the Defendant's weekends with the children which was the subject of serious concern.

3. In Paragraphs One, three and Four and in other parts of the Affidavit, Elizabeth Scheffee advances the fiction that she offered Plaintiff more to settle than the court gave him. This is simply not the case. Plaintiff received at least $18,000.00 more from the court than the Defendant's last offer. Had Defendant been more reasonable in her offers, she would not have had to spend the additional $23,000.00. Likewise, the tax consequences of the sale described in the affidavit are incorrect. Plaintiff could show a loss resulting from the amount distributed to him. Therefore, there would be no taxable income attributable to him.

4. In Paragraph Five of the affidavit, Defendant's counsel alludes once again to the Plaintiff's so-called fantasies of killing his wife. The only reason so much time was spent on this issue at trial was that the Defendant was attempting

to use this issue to force Plaintiff to leave the marital home. Defendant's focus on this bogus issue continued throughout many court proceedings despite evidence presented by the Plaintiff and his therapist that the Plaintiff had no such fantasies. Defendant's counsel's focus on this bogus issue cost the Plaintiff thousands.

5. Ms. Scheffee's explanation for having Steve Lunt assist her is incredible and an insult to the court. Further, Ms. Scheffee told me that when a trial is longer than a certain period of time, it was her firm's policy to send two attorney's to handle it.

6. Ms. Scheffee claims that Plaintiff's unreasonableness in not accepting the Defendant's financial analysis that caused increased costs of the trial. However, both Plaintiff and his accountant presented error after error in the Defendant's computations at the trial.

7. Ms. Scheffee claims that the Plaintiff should have been limited in his presentation to his opinion that the Defendant was a bad mother and should not have primary physical custody. There is no case law supporting this position. It would be improper for this Court to penalize the Plaintiff for calling his two expert witnesses, Nellie Blagdon, Peter Tambone, Amy Nailor and MIke Lorbeski to testify about the Defendant's behavior and reputation for lack of veracity in the community.

8. Much of the time spent in this case prior to the trial was not due to the conduct of the Plaintiff, contrary to what was represented by the Defendant in her affidavit, but was due to the Plaintiff seeking discovery, seeing his loan funds, and fending off numerous motions and actions of

the Defendant trying to get him out of the marital residence."

Date: March 29, 1994, Original signed by Atty Judy Potter. Potter attached several other pages to this document. These documents can also be viewed. They were titled:

Efforts by the Plaintiff to Obtain Proceeds of Loan Plaintiff's Problems enforcing order giving him exclusive use of marital home which were subjects of court action pending

Pleadings filed by each party

Settlement efforts and Financial Analysis, Churchill

Plaintiff's attempts to get the Defendant to furnish
/s#Judith Potter, Esq

Affidavit of Kasper

Maine District Court, Wiscasset Maine
Vogt V Churchill
WIS-91-DIV-123

Affidavit of Deborah Kasper

7. Approximately three weeks prior to the start of the divorce trial Nancy Churchill, who had not spoken to me in months, drove up to my front yard as I stood there. She began a conversation which did not seem to make any sense. Du8ring this conversation she kept stating "what goes around, comes around". She repeated this many times and then drove off.

9. I have observed how Churchill retaliates against anyone who goes against her.

10. I did not testify at the divorce trial for fear that Churchill would cause problems in my marriage.

"s# /Deborah G. Kasper"
9/1/95

Affidavit of Blagdon

Maine District Court, Wiscasset Maine
Vogt V Churchill
WIS-91-DIV-123
Affidavit of Helen Blagdon

3. I testified at the divorce trial of Nancy Churchill on October 14th, 1992.

4. I testified at that trial about an article I wrote for the Kennebec Journal about an interview with Nancy Churchill and Jim Vogt prior to the birth of the children.

5. A few weeks after my testimony the Town of Richmond [where Churchill was manager] completed significant drainage work around my home. This work was not completed in keeping with an agreement made with myself and other neighbors regarding how it was to be performed. This agreement was made before I testified at the trial.

6. I refused to return to court because I was afraid of what else might be done to me.

"s#Helen P Blagden" 8/30/95

Affidavit of Mike Lorbeski

Maine District Court, Wiscasset Maine
Vogt V Churchill
WIS-91-DIV-123

3. I was selectman in the Town of Richmond and was censured by the Board of Selectmen of the Town of Richmond on October 22nd, 1992 at a public meeting. This censure came immediately after I testified at the divorce trial of Nancy Churchill.

4. A reporter from the Times Record was at this meeting. This reporter told me that Nancy Churchill had personally summoned him to this meeting to report the events of the evening, thus ensuring my censure was a media event receiving even more publicity.

5. I knew nothing about this censure nor the basis of the allegations until I arrived at the meeting a few minutes before it start, at which time I was told by Molnar that I was to be censured. I was not given the facts behind the censure before or after the meeting, even though I asked the Chairman of the Board of Selectmen in writing for these facts and was denied same in a letter signed by Churchill.

6. The allegations contained in the censure were unfounded and fabricated.

7. The censure was carried out at the very next selectman's meeting following my testimony at Churchill's divorce trial and complaints about my conduct had never been made prior to the public censure.

8. Churchill attempted to solicit selectman support in preventing my testimony during an executive session on October 8, 1992. My recollection of Churchill's comments are a part of the record in the divorce trial transcript. Her statements included "what are you going to do about (or with) him" regarding my testifying at her divorce.

9. Immediately before I testified under subpoena, Molnar sent me a letter through the US mail. This letter acknowledged an illegal meeting wherein my testifying at Churchill's divorce was supposedly further discussed. This letter made a statement that "I would not be acting on the Town or Board's behalf (as a body)". The censure contained this allegation.

10. Paula Umberhind told me that no such meeting after the regular session on October 8th was ever held. Therefore the discussion Molnar discussed in this letter could not have taken place.

12. I contacted the office of the Lincoln county Sheriff because Mr. Vogt had told me the judge turned the matter over to that office for investigation. The Lincoln County DA acknowledged the case of "State of Maine vs Churchill", but said the case was given to Sagadahoc DA Rushlau. I contacted the Sagadahoc DA and, after multiple attempts, was told they knew about the tampering. Subsequently, I had a meeting with the Sagadahoc DA Office. At that meeting, Rushlau was present and stated that he "probably should not be there (or something to that affect), but did not leave.

14. Churchill did not stop with the censure. In a public document written by Churchill to the Board Churchill

stated that I stole town records. In fact, I came across one bill from the town attorney which clearly showed Churchill to be the driving force behind my censure. I was certain that town employees would not let me copy this bill and that if I left it there it would disappear as other documents had in the past. Therefore, I took the bill to my home and made copies.

15. Subsequent to the censure I lost my bid for re-election to the Board of Selectmen.

"s#Michael S. Lorbeski"
8/27/95

Maine Attorney General to BOOB

Maine Attorney General's defense of DA Rushlau before the Board of Overseers of the Bar, Dated April 28th, 1994

Last paragraph, page 2, quoting Asst DA David Spencer:

"It is my understanding that judge Field referred the case to the District Attorney's Office, not because he believed it had merit, but because he wanted to put the issue to rest for the purpose of getting on with the relevant issues at the divorce trial.

Page 3, third paragraph:

"It is true that Rushlau felt uncomfortable at the meeting with Lorbeski and that he said so. In particular, he said something to the effect of 'I really don't want to be involved in this.' Lorbeski's allegations in part impugned

Nancy Churchill, who had been a credible witness for the State in Rushlau's past criminal prosecutions."

Spickler Denials

Letter, Vogt to Field, April 22, 1996
Maine District Court, Wiscasset Maine
Vogt V Churchill
WIS-91-DIV-123

Paragraph 4. Complaint, Superior Court, violations of right to know law by Committee on Judicial Responsibility. Basis, refusal to supply lawfully requested information or to supply a basis for objecting to same. [The word "Denied" hand written by Field in the margin.]

Paragraph 5. Complaint, DHS, regarding all of the false statements made by Churchill which you have obviously have no problems with: abuse of civil process; refusal to correct hundreds of dollars in support now paid for child care which the children do not use; to credit my account with the hundreds taken wrongfully by the order you issued without hearing and subsequently refused to credit or otherwise act upon. [The word "Denied" hand written by Field in the margin.]
"s#James W. Vogt" With annotations by Field

Order, Perkins 6/17/96
Superior Court, Lincoln County
Vogt V Churchill
WIS-91-DIV-123

Denial of request to file complaint for fraudulent transfer of real estate.

"Upon request of James W. Vogt for permission to file complaint as attached hereto pertaining to the fraudulent transfer of real estate, and it appearing that the complaint is neither signed nor "countersigned b an attorney licensed to practice in this state" pursuant to order of court dated February 5, 1996 It is ordered that the clerk of courts is directed to reject the complaint for filing in the Superior Court for Lincoln County for the reasons stated above.

"s#Stephen L. Perkins, Justice, Superior Court"

Order, Perkins, August 21, 1996

Superior Court, Lincoln County

Vogt V Churchill

WIS-91-DIV-123

This matter came before the court on a request of James W. Vogt to reconsider the order of this court dated June 17, 1996 seeking authority of the Superior Court to permit him to file a complaint in accordance with procedures set forth by Judge Field of the Maine District Court in his order of February 5th, 1996.

While the order of judge Field is somewhat ambiguous, this court upon further review accepts the interpretation given by the complainant as reasonable alternative methods that may be utilized by him to file a complaint with the court in certain specific conditions.

Nevertheless, the court does believe and so finds that signature of the complainant is required on the initial filing with the court seeking approval of the filing if the complaint does not carry the signature of an attorney. In this case it did not.

Therefore, the ruling of June 17, 1996 denying acceptance of the complaint for filing is affirmed.

Order, Justice Crowley, Superior Court

Sept 30, 1996
Superior Court, Lincoln County
Vogt V Churchill
WIS-91-DIV-123
This cause came before the court on the request of James W. Vogt to appeal the order of Justice Perkins dated August 21, 1996 (denial of permission to file a complaint). It is ordered that request to appeal order of Justice Perkins (denying James W. Vogt permission to file complaint) is denied.
"s#Robert E Crowley, Justice, Superior Court"

COJR and BOOB

Committee on Judicial Responsibility

Letter to Vogt, 3.27.97
Third paragraph.
"By the court order establishing this committee and by the Committee's own rules, all matters before this Committee are confidential. The Committee specifically requests that you respect and abide by the confidentiality of this proceeding."

Board of Overseers of the Bar

Speech to Family Law Section, Maine State Bar Association, 7th paragraph quoting Scott Davis, Bar Counsel.

"Scott noted that often what they are looking for is information to confirm that their initial reading of the mater is right, i.e., it should be dismissed."

Fifth Motion for Field's Recusal

Maine District Court, Wiscasset Maine
Vogt V Churchill
WIS-91-DIV-123

Denied: "This is a small town".

INTRODUCTION

At a time when the nation struggles with a problem of absentee fathers, Judge Field has waged a one man campaign from the bench to destroy Plaintiff's relationship with his children and to drive him from their lives. At a time when the nation struggles with a problem of 'deadbeat' fathers who do not pay support, Judge Field repeatedly acts to create a situation where Plaintiff's support is unfair and unjust. At a time when the nation struggles with a problem of increased spousal abuse, Judge Field has waged a one man campaign from the bench to continually assist and reward Defendant Churchill for harassing the Plaintiff and minor children, violating plaintiff's rights and those of the minor children and violating the law. While both Federal and State Constitutions, Maine law and justice require equal protection of the law, Judge Field continually acts to ensure Churchill is the "big winner" in this divorce case, and ultimately, that Plaintiff is the overwhelming big loser. Judge Field has clearly not missed an opportunity to do so in the past. Circumstances occurring at the pre-trial conference on September 16th, 1996, clearly indicate he has no

intentions of ceasing the benevolent behavior in favor of justice and equity. Repeatedly asked to step down, Judge Field refuses. His conduct has been such that now he is forced to write on his orders "Judge Field must hear" (Plaintiff's Exhibit 2).

For more than four years since declaring Plaintiff was not fit for any parental rights or responsibilities, a conclusion he came to based on the sole reason that Plaintiff stuck his tongue out at the Defendant's hateful attorney in court, Judge Field has ignored physical evidence after evidence, year after year, that the Defendant is the one who is not capable of cooperating or able to learn to cooperate. More important, Judge Field has refused opportunity after opportunity to force the Defendant to change her ways. This is not "new news" to Judge Field. Expert witnesses testified to this fact. The dispicable sworn and unsworn statements by the Defendant and her attorney, proved false by years of journal entries written in her own hands, proved this. This fact was reiterated in Attorney Potter's Post Trial Brief, along with other statements which proved Defendant would try to drive the Plaintiff from the Children's lives. Unfortunately for the minor children, Judge Field chose to state that he never received this document.

Four years after stating Plaintiff was not fit to enjoy a single parental right, Judge Field stated in open court that he never intended for this situation of sole rights and responsibilities (which he awarded to the obviously sociopathic Defendant) to go on forever, and that it would have stopped long ago if it were not for appeal. Given nothing is changed, it strains belief anyone could make such a statement, and clearly proves the original order was simply nothing more than a continuation of his punishment of the Plaintiff (and

indirectly, the minor children). Equally important, the law provides for a change in parental rights:

> "Any order for parental rights and responsibilities with respect to a minor child may be modified or terminated as circumstances require upon the petition of one or both parents" MRSA 19, Section 214, Chapter 11.

This is not the only law regarding modification:

"Modification of child custody provisions of divorce decree was warranted where there was evidence of change in circumstances since prior custody order which was substantial in its effect upon best interest of children" Greely v. Greely, (1989) Me., 566 A.2d 1382

Plaintiff sought modification. Judge Field denied (obviously knowing full well about the contemptuous, harassing activities of the defendant).

Plaintiff's motion for recusal is based on the allegation of five years of prejudicial conduct by the court, said conduct violating Canon, Maine Law, Case Law and Federal and State Constitutional Guarantees. The extent to which this prejudicial conduct has damaged Plaintiff and violated plaintiff's rights is discussed within. In addition, and in support of this Motion, Plaintiff submits an affidavit detailing the continued contemptuous actions of the Defendant beginning a few hours after the pre-trial conference on September 16th, 1996 (where she was basically ordered to stand trial for civil and criminal contempt (based on Paragraph 6, Plaintiff's Exhibit 11), and continuing to date, as proof that the Defendant has

foreknowledge she will never be held accountable by the Court. This affidavit cites more than 20 violations of the contempt citation or other court orders in the 20 days since that pre-trial conference alone. Certainly, five years of record, including numerous contempt and harassment actions, prove this to be true. In addition, Plaintiff permission for a motion for contempt from Judge Field based on the Defendant's refusal to comply with the direct order of the court to compel discovery regarding Defendant's previous attempts to evade discovery. Judge Field first wrote permission for 'contempt', and then crossed this out and wrote 'compel discovery', clearly preventing another contempt action against the Defendant (Plaintiff's Exhibit 7).

Plaintiff reiterates as much of Judge Field's previous conduct as possible so that the totality of his conduct can be understood. Plaintiff seeks the current motion because, in a pretrial hearing held September 16th, Judge Field demonstrated beyond the belief of any reasonable person that he will continue his prejudicial conduct: he refused to order the defendant to turn over documents which would prove she has acted in contempt once again, instead requiring an affidavit that only he would see; his order on the affidavit stated it was about "no doctors", when he knows the Defendant will simply lie about the fact that the "doctor" who gave the report sought by Plaintiff was only doing so as a friend (Judge Field also knows full well that this is not the first time Churchill sought psychiatric evaluations for the children and that both she and her lied attorney about same [Dr Drach (Plaintiff's 18)]. Judge Field also knows that Churchill's intentions were not honorable when seeking this evaluation either) (Plaintiff's Exhibit 2); he spoke to the Defendant, as he always does, in a manner completely and exponentially different than that with which

he addresses the Plaintiff; he actually started to grant a motion for the Defendant he had just denied for Plaintiff (and ordered significant fees for her success as well[i]). And, in addition, he ensured that no other judge could hear the matter, clearly signaling that Judge Field does not want any impartial review of the five years of evidence to be presented.

Judicial Canon 3E(1) states: a judge shall disqualify himself or herself on the judge's own initiative in any proceeding in which the judge has reason to believe that he or she could not act with complete impartiality. It strains belief that Judge Field could possibly believe for one instant that his conduct over the five years that this litigation has lingered in his court has not been partial to the Defendant and the Defendant's attorney. Canon 3E(2)(a) provides basis whereby a judge may disqualify him or herself when he has a bias or prejudice against a party. The first canon cited places the hope for justice and fairness in the courtroom on the personal integrity, honesty and fairness of the Judge. The second citation again relies on the integrity, honesty and fairness of the Judge as well. Other Canon however, discussed elsewhere herein, are more specific about the conduct of the Judge. In addition, Canon 3E(4) provides the only circumstance whereby a judge can continue on a case when effectively disqualified: the lack of any other judge to hear the case. Such has never been the situation in this case.

The conduct of the court in this case has caused the entire judicial and regulatory processes to be called into serious question. This case, and others stemming from it, will clutter the courts for years to come, the direct result of misconduct tolerated and justice denied in this court. None of the other actions would have been necessary if it were not for the conduct that Judge Field himself personally

participated in, or that which he allowed to go on in his court because it suited his purpose.

Judge Field and the Defendant have often blamed the Plaintiff for the fact that this case has dragged on so long. Not only does this fact fly in the face of others to the contrary (discussed elsewhere herein), but if so, what statement does this make regarding the control Judge Field exercises in his court? The question must be asked: Who benefits from the delays? Certainly not the Plaintiff who has severely restricted access to his children; who possesses not one parental right or responsibility; whose visitation is constantly interfered with by the Defendant; who is being forced to rack up extreme debt; who is being forced to pay support for services the children do not use; who continues to rack up debt for a home he cannot use; who has no access to the funds and property in question; who pays support based on incomes which are fraudulent; and whose rights are routinely violated by the court. In fact, only the Defendant has benefited.

No reasonable person could look at the totality of conduct of the Court in this matter and not come to the conclusion that the Defendant and her attorney would be fools not to continue perjury, false statements, violating law, process, court orders and any other manner of inappropriate conduct. After all, they have not only gotten away with this type of conduct for five years, they have benefited significantly by the outcome, tens of thousands of dollars in ridiculous fees (undetailed or submitted in sworn fee affidavits containing perjury) and by having a blind eye turned to repeated unethical, unlawful conduct.

Plaintiff therefore requests that Judge Field recuse himself from any further matters in this case and transfer the case to

a less biased judiciary for hearing for the following reasons supported by the attached

I. VIOLATION OF PLAINTIFF'S FEDERAL CONSTITUTIONAL RIGHTS

A. Sixth Amendment of the US Constitution.

1. The US constitution, sixth amendment thereof, provides:

> "to have compulsory process for obtaining witnesses in his favor...."

a. Judge Field, confronted with testimony and physical evidence, refused repeated requests by Plaintiff to protect the witnesses brought to testify in his court, and in fact, never did (Transcript, Divorce Trial). Judge Field took deliberate steps to ensure the defendant would not only be allowed to continue retaliating against Plaintiff's witnesses, but made sure she was never held accountable for these repeated criminal acts by scuttling the investigation into the criminal acts at the onset by telling the District Attorney the allegations were without merit (Plaintiff's Exhibit 1, page 2, last paragraph, highlited, Attached). The effectiveness of this criminal tampering was such that two witnesses would not return to Court and a third declined to participate immediately after being threatened. This conduct on the part of Judge Field allowed Churchill to contact the Town, media and law enforcement agencies with her infamous "I have been exonerated" letter (Plaintiff's Exhibit 8).

b. Dr. McLynn was in court to testify about the Guardian's problems with process, ethics and logic at the hearing of the guardian's motion to withdraw. Judge Field

read the pleadings submitted by Attorney Potter and thus knew the nature of Dr. McLynn's testimony. Judge Field shutdown the case without allowing Dr. McLinn or the Plaintiff to testify against the Guardian, Lynda Doyle. He did so at a hearing at which he refused to allow the proceeding to be recorded (one of several). Many months later Judge Field admitted a long term relationship with Doyle and her Husband which included renting living quarters. Plaintiff's attorney refused to challenge the Court on this point because Plaintiff's attorney had a long term personal relationship with the Guardian and her husband and knew how damaging Dr. McLinn would be to Doyle's reputation. By preventing this witness from testifying Judge Field made sure that a personal friend escaped exposure for incompetent, unethical acts and forced Plaintiff to spend considerable sums for expert witnesses to defend against her biased, incompetent report. Judge Field gave Churchill and her attorney significant fees for the Plaintiff's defense of his personal friends false misrepresentations at trial. The Defendant filed a complaint against Dr. McLinn in retaliation for her testimony with Dr. McLinn's professional licensing board, waiting until Judge Field had given her total rights and responsibilities for the minor children. When informed of this, Judge Field chuckled.

c. Plaintiff had brought four witnesses to court to testify about the poor character of the Defendant. Judge Field refused to allow these individuals to testify.

d. Plaintiff gave the guardian an initial list of individuals to contact regarding the character and parenting abilities of the Defendant. Plaintiff followed this up with an even more extensive list. Not only did the Guardian not contact the majority of these individuals, she totally misrepresented what they told her about the Plaintiff. As an

officer of the Court, the Guardian had a responsibility to interview appropriate witnesses and report back what they said, not what the Guardian wanted to hear. Plaintiff has tape recordings of interviews by the Guardian and can therefore prove the Guardian lied. The Guardian admitted she had not contacted these individuals. Mary Gay Kennedy, called by the defendant to bolster Doyle's pathetic report, was forced to admit on cross examination that Doyle did not follow process, misrepresented. Dr. Brian Rines and Dr. McLynn testified to the problems with Doyle's conduct. Judge Field did nothing about this conduct, and the outcome of the trial is void of any indication in word or action that the Guardian ever misrepresented or participated in any other unethical or unlawful conduct (Trial transcript, Judgment).

e. When defendant brought her police chief to testify that someone had told him of Plaintiff's threats to kill the Defendant, the police chief and defendant refused to turn over the name of the person involved. Plaintiff determined who had been talking to the police chief and obtained a voluntary affidavit regarding what was actually said. Judge Field ignored the misrepresentations of a police officer, (who testified falsely under oath at another hearing, and who received an unbudgeted $3000.00 salary increase from Churchill subsequent to doing so), the Defendant and the affidavit of the person supposedly quoted and ordered a protection from abuse order anyway (Plaintiff's 12)[ii]. Defendant then, as Judge Field certainly knew they would, went on to bring the false death threats up in every venue possible for years to come.

f. As a result of discovery in another federal suit, Plaintiff obtained documents which proved beyond any doubt that Churchill threatened and retaliated against the

witnesses Plaintiff brought to trial. Plaintiff submitted this evidence, along with affidavits from four involved individuals to Judge Field (Motion for Specific Acts). Judge Field denied the motion and refused to admit the evidence into the record.

g. After the Defendant was awarded the big win of the divorce and fee order, she filed a retaliatory complaint against Dr. McLynn, whom Plaintiff had testify in his behalf.

B. The US constitution, sixth amendment thereof, provides:

> "In all criminal prosecutions the accused shall enjoy the right of speedy and public trial....to be confronted with the witnesses against him;

a. The trial in this litigation started in October, 1992 and was completed in February, 1993. Judge Field did not render a judgment until August, 1993. This Judgment was incomplete by Maine law because it did not include the fee order. Judge Field did not complete this judgment until December, 1994, and then, only days after suit was filed against him in Federal Court charging violation of constitutional law.

b. The record in this case is replete with dozens of other examples where hearings were delayed many months. As the prejudicial conduct (detailed elsewhere herein) continued at an exponential rate, Judge Field would openly state that only he could hear any motion in the case. This was true even to the latest hearing wherein he even typed in emphasized print that he and he alone must hear the matter (Plaintiff's 2).

c. Plaintiff sought to have the courts halt the defendant's repeated and pervasive harassment of the Plaintiff and the minor children months prior to the start of the divorce trial. Judge Field refused to hear the matter, stating he did not want to try the case piecemeal. This allowed the defendant to continue (to this day) to harass and otherwise violate Plaintiff's rights. At trial, this harassment was testified to by the Plaintiff, documents and other witnesses. Judge Field rewarded this conduct with sole rights and responsibilities and stripping Plaintiff of the role of primary caretaker.

d. This inaction and delay on the part of Judge Field also violated Judicial Canon:

Canon 3B(8), dispose of matters promptly and fairly.

> Canon 1: "Uphold the integrity and independence of the judiciary..."

> Canon 2: "Avoid impropriety or the appearance of impropriety.."

e. Plaintiff sought the assistance of the Chief Judge of the District Court, both to have the case expedited, and to have Judge Field step down. Judge Studstrup stated he had limited power over Judge Field. However, the copy of Judicial Canon that Plaintiff has states otherwise:

> Canon 3(C)(3): "A judge with supervisory authority for the judicial performance of other judges shall take reasonable measures to assure the prompt disposition of matters before them and the proper performance of their other judicial responsibilities."

Judge Studstrup's responsibilities do not end there:

> Canon 3(D)(1): "A judge who receives information indicating a substantial likelihood that another judge has committed a violation of this Code should take appropriate action."

While the second citation of Canon gives Judge Studstrup an out (uses the word "may"), the first does not (specifically states "shall"). Judge Field is still on this case. Judge Studstrup dismissed Plaintiff's allegations as simply that of someone unhappy with the decision of a Judge (the explanation given for excusing the misconduct of a Judge).

f. At a hearing on November 15th at which Judge Field heard many motions, Judge Field gave the Plaintiff seven minutes to cross examine the Defendant on all the motions pending, this even though nothing was scheduled in that courtroom the rest of the afternoon. Field went on to deny all but one Motion (Plaintiff's Exhibit 11).

g. At the November 15th hearing on the permanent injunction, the only "evidence" given the court was the statement of the Defendants attorney, said statements being incorrect and not supported by the record. The Defendant's attorney was not required to testify or provide documents, even though she was seeking relief under the divorce case, and was not a party. Not a single shred of evidence was submitted to prove that Plaintiff ever filed a frivolous or malicious complaint. In fact, everyone in the courtroom knew this was not true, and that requiring a fair and impartial hearing at which the evidence could be submitted would not support the outcome desired by Judge Field.

h. Judge Field heard a motion for permanent injunction. No witnesses were presented against Plaintiff at this hearing. Instead, the Defendant's attorney, a proven liar who has lied in sworn fee affidavits to the court, was allowed to 'testify' against Plaintiff without being sworn in. During this testimony, the Defendant's attorney lied.

C. First Amendment of the US Constitution.

1. The First Amendment to the US Constitution provides:

> "Congress shall make no law...prohibiting...or abridging the freedom of speech, or of the press...and to petition the government for redress of grievances"

a. Judge Field, contrary to the evidence and the Defendant's own attorney, placed a Protection from Abuse order on the Plaintiff as part of his Aug 13, 1992 Judgment. The intent of this PFA, as well as the first, was to prevent harassment of the Defendant, including involving third parties (i.e., IRS, District Attorney, Attorney General, etc.). Given the Defendant's own attorneys stated it was not necessary at trial (transcript), the only possible reason for this order was to gag the Plaintiff and prevent him from proving the allegations or seeking redress from the ongoing criminal acts of the Defendant and the misconduct of the court.

b. Judge Field did not stop there. After stating in open court that he probably was not the person to be doing so, he not only heard a motion for permanent injunction (Plaintiff's submitted by the Defendant's attorney

(seeking relief while refusing discovery), but went on to order it as well.

(1). The action by the court violated at least three judicial canon and multiple case laws and multiple constitutional guarantees (free speech, right to seek redress, due process, equal protection, etc):

> "No judge should preside in a case in which he is not wholly free, disinterested, impartial and independent (Bernard (1979), ME 408 A.2d 1279)"
>
> "Even where the actual bias or prejudice on part of judge is not, or cannot be shown, in some kinds of circumstances per se prophylactic rule of judicial disqualification is operative to guarantee constitutional due process of law; these are patterns or circumstances as to which experience teaches that probability of actual bias is too high to be constitutionally tolerable" (Brengelmann v Land resources of New England 1978 Me 393 A.2d 174);
>
> "Due process of law requires a hearing ...no judge shall preside in a case in which he is not ...disinterested, impartial and independent...or in which he or it is directly or indirectly interested" (Hughes v Black 1960 156 Me 69, 160 A.2d 113).
>
> Canon 1: "Uphold the integrity and independence of the judiciary..."
>
> Canon 2: "Avoid impropriety or the appearance of impropriety.."
> Canon 3B(8), dispose of matters promptly and fairly.

c. Judge Field then immediately went on to deny Plaintiff the right to file complaints (Plaintiff's Exhibit 5). These motions and/or complaints were for redress for continued harassment by Defendant via the DHS (paragraph 5 DENIED, and subsequently allowed by Superior Court); and for refusal to comply with lawful requests for information -under the freedom of information act (paragraph 4 DENIED, and which would have potentially reflected on him) and were thus totally appropriate documents whose denial was a violation of Plaintiff's rights.

d. Since the order has been in place, it has acted in a manner Judge Field intended:

(1) The Board of Overseers of the Bar refused to allow Plaintiff to file a complaint about further misconduct (known false misstatements in an exparte motion in Superior Court).

(2) Temporarily prevented Plaintiff from stopping the harassment via the DHS, much less making the known false statements of the Defendant known to that agency.

(3) Prevent the filing of other appropriate suits.

(4) Be effectively used to discredit Plaintiff prior to any filing by forcing him to make the new court/judge or Justice aware that an injunction existed, thereby destroying Plaintiff's character in the eyes of the court prior to any filing and allowing everyone involved to use the injunction as proof of the outcome of some fair, ethical judicial process.

(5) Allow the defendant's attorney, also covered by the injunction (and who refused to provide discovery) to attempt in two different courts to punish Plaintiff for alleged violations of the injunction (Plaintiff's 10). It should not be lost on the court that one of these motions for contempt was filed with the clerk of the District court, and, without hearing or other formal, documented action by the court or entering upon the record, was returned to the Defendant's attorney with a postit note stating it should be filed elsewhere.

e. At the same time, the order has: been found to be ambiguous by one Justice; has been ignored by another; motions for contempt have been denied based on the injunction; and another Justice as found merit in at least part of Plaintiff's complaint regarding harassment via the DHS and has permitted a filing (after review of the document) which Judge Field personally denied with no other facts than the intent of the complaint (and the knowledge that it involved the Defendant possibly being caught in yet more perjury).

D. Eight Amendment of the US Constitution.

1. The Eighth amendment of the US Constitution provides:

"no cruel or unusual punishments inflicted"

a. Judge Field, in his judgment, stripped the Plaintiff, a "male" mother who had raised the children since birth by agreement of the parties of all parental rights and responsibilities and reduced Plaintiff's access to four days per month because plaintiff stuck his tongue out at

Defendant's attorney. Judge Field also ordered Plaintiff to pay nearly all of Defendant's fees, this while completely ignoring uncontrovertible proof that the majority of Plaintiff's expenses were due defending against frivolous motions, lies and other abuse of process on the part of Defendant and Defendant's attorney.

b. What more cruel punishment could Judge Field have inflicted upon the Plaintiff than taking away the children who mattered most to him, and which he had raised since birth by the agreement of the parties? What more cruel punishment could Judge Field have inflicted upon the Plaintiff than taking away all rights in their lives and giving them to someone he knew full well would abuse these rights and attempt to drive the Plaintiff from the Children's lives?

E. Fourteenth Amendment
of the US Constitution.

1. The Fourteenth amendment of the US Constitution provides:

"...nor deny to any person of life, liberty, or property without due process of law, nor deny to any person the equal protection of the law"

a. Judge Field's actions were so anti the Plaintiff that Attorney Potter stated repeatedly that she did not want to file anything in his court because he would find some way to punish us for it. In fact, Plaintiff has at least one recording of Potter stating we should accept an agreed order in place of her request to continue the PFA, something they did not have a shred of evidence to support, because "what can I tell you Jim, we have Field up there". This

statement was in response to Plaintiff's query regarding why he should agree to an order in lieu of another PFA (requested by Churchill) when, in fact, the Defendant had absolutely no basis for the request. Regardless, to escape more punishment from Judge Field, Plaintiff agreed to a consent order (Plaintiff's 14) solely because Potter stated it would give us an order protecting us from her as well.

b. During a hearing seeking Judge Field's rescinding of an order for withholding he issued without hearing and contrary to the evidence, Potter leaned over to Plaintiff and stated "listen to him, he is trying to find a way to increase the support payments anyway."

c. Statements made by Judge Field during the Motion to set aside the order of the referee regarding transfer of real estate do not appear in the transcript. These statements supported Plaintiff's case. Obviously, Judge Field caused the transcription to stop, made the statements to the room only, and then caused the transcription to resume, leaving Plaintiff to believe the statements would be on the tape. The statements which are missing were to the affect: "I can understand how people can be confused with reference, arbitration, "mediation...sometimes I get confused myself". Judge Field then went back on the recording and went on to deny anyway.

d. Plaintiff entered this litigation seeking to free himself from an emotionally abusive, bisexual wife. He was not primary wage earner but was incontrovertibly primary care giver. He had no job and all of his assets were under the control of the Defendant or in the marital residence. As a result of the actions of the District Court, Plaintiff was stripped of his children and all rights relating to same. Plaintiff was thrown out on the street without support or

means of support. Plaintiff was ordered to return to the marital home every day to care for the minor children and be further abused by Defendant. It strains belief that such an order would have been issued against a female. All of these actions were taken by Judge Westcott, who as late as mid December, 1994 was still going out of his way for the Defendant by openly representing Defendant to the Lincoln County Commissioners in hopes of obtaining a $48,000.00 grant which the Defendant would earn more than 50% by administering. Judge Field took over the baton and continued the practice of prejudicial conduct against Plaintiff. The end result was that the Defendant, who had violated several laws during the proceeding, was made the "big winner" and the Plaintiff the uncontroverted "big loser". The orders of both judges were contrary to the evidence, of common sense and extraordinarily adverse to Plaintiff.

Canon 4(A)(1) "so that they do not cast reasonable doubt on the judge's capacity to act impartially as a judge, and (2) demean the judicial office".

e. Plaintiff sought to have hearings transcribed. Judge Field repeatedly refused, even though those requests were made to the clerk prior to the onset of the hearing. At these non-transcribed hearings, Plaintiff's rights were violated and due process was denied.

f. Plaintiff and his children have a constitutional right to enjoy each others love, contact and to be a part of each others lives. Judge Field repeatedly violated those rights by allowing the Defendant to interfere for years on Plaintiff's and the minor children's visitation. For five years, Judge Field did absolutely nothing to halt this behavior.

g. Plaintiff reaffirms the allegations laid out above regarding Judge Field's aiding and abetting the criminal tampering of the Plaintiff and perjury on the part of the Defendant and Defendant's attorney.

h. Plaintiff repeatedly asked for facts and findings for Judge Field's unjust, cruel orders. Judge Field repeatedly refused, even though Maine law and case law requires he comply for purposes of appeal.

i. Plaintiff, after experiencing the number and magnitude of lies accepted by the Court at the Motion Pending Hearing, subsequently asked that every hearing be transcribed. The Court always refused to transcribe these hearings, even when asked on the day of the hearing. At these hearings, even more lies were accepted by the Court. Plaintiff attempted to have his attorney force the transcription of these hearings, she either did nothing, or was unsuccessful, as no transcripts were made. Plaintiff has supplied an affidavit of his recollections of this hearing as allowed by MRCP. Plaintiff's recollection is that the Court did not allow Dr. McLinn to testify, and in fact, allowed no contradictory testimony whatsoever; Plaintiff's attorney refused to call the judge on this matter; the guardian lied to the Board of Professional licensure and to the Court in her report; and Defendant's attorney lied to the Court, Board of Overseers of the Bar and the Board of Professional licensure. The results of the benefits to the Defendant, Defendants attorney and others of the refusal of the Court to transcribe these hearings is obvious, as well as the motivation.

j. The Court requested findings of fact and conclusions of law. Plaintiff was charged more than $7500.00 to prepare this briefing and submitted same to

court. The Court never used a single word from this 72 page document and in fact, stated it was not submitted. Plaintiff's attorney wrote the court regarding this document stating it conformed with statutes. The court still did not use this document, instead using that submitted by the Defendant, incorporating many of the misstatements of fact contained therein in it's judgment.

k. After five years of being informed of continued interference in visitation by Defendant, Judge Field found the Defendant in contempt of court. The law provided several means of relief:

"If the court finds that a parent has violated a part of the order, the court may find that parent in contempt and may do one or more of the following....require more specific terms and conditions consistent with the order..order additional visitation...pay a fine of at least $100.00" Violation of Order, MRSA 19, Section 214, Chapter 6-A,B,C, and repeated under Section 581, Chapter 6-A, A,B,C, as well as Section 752.

Judge Field refused repeated requests for punitive and deterrent provisions and took none of the options available to him. In fact, the provisions of the Contempt order simply restate the provisions of existing orders. As would be expected, the conduct continued.

l. Judge Field misconstrued the order of a Supreme Court Justice regarding what is required in a post judgment order granting a party the right to marry to prevent his having to set aside the order upon reference which exchanged plaintiff's rights to appeal and tens of thousands of dollars for Plaintiff's right to marry.

m. Of the many incidents of each, not one misstatement of fact, one violation of law or one use or abuse of discretion in four years can be found which prejudiced the Defendant. On the other hand, all prejudiced the Plaintiff.

n. Judge Field ignored false complaints by Defendant to the DHS regarding being in arrears in support, as well as threats of more action. Successfully carrying out these threats caused Plaintiff problems in his workplace.

o. During the November 15th hearing, Judge Field would routinely attempt to put words in Plaintiff's mouth which he could or would then use for his prejudicial orders.

p. Judge Field refused to hear an objection regarding the latest support levels established by the referee, spent nearly ten minutes trying to find a way of getting out of the order, only to find he could not. Then, refused to allow the introduction into evidence of the Defendants fraudulent tax return on which the support was based. The end result is that now, and for many, many months, Plaintiff has paid more support than required by law. This includes not only the Defendant's false representation of income, but the fact that the child care provisions of $115.00 per week remain in effect even though the children go to school full time and have for more than a year.

q. Given: pictures drawn by the parties six year old daughter, one crying, one with a 'heart' where her genitals are (called her love spot) and a third holding the hand of her mother with yet another "love spot" drawn where her mothers genitals were; testimony and sworn

affidavit of another witness regarding the children stating they sleep with the mother on alternate nights, which child gets to sleep controlled by a ribbon on the door; and finally, medical records which state the child had been treated for some condition which required a check of her external genitalia and was told to consume more water, Judge Field confiscated the pictures, refused to admit them, then went on to allow the mother to state she was now being accused of abusing her child. Never, at any time during this litigation, has Plaintiff suggested that the mother abused the children. Plaintiff's concern were more about the possibilities that one of the teenage boys that Defendant allows to care for the children while she was away, or some other individual, may have been doing something to the child. It should not be lost on this court that the child has never ever drawn another picture of herself or the mother since the Defendant learned of the drawings.

F. Constitution of the United States,

Article III:

1. Article III of the US Constitution provides:

"...The judges of the superior and inferior courts shall hold their offices during good behavior"...

a. Judge Field and Judge Westcott's conduct speak for themselves. In addition, it should not be lost on this court that Judge Field threatened the Plaintiff and his attorney with fees if they did not accept his judgment (Judgment). It should also not be lost on the court that Judge Field did exactly that when his actions were challenged ($30,000.00 in fees for Defendant and her attorney).

II. VIOLATION OF PLAINTIFF'S STATE CONSTITUTIONAL RIGHTS

A. Constitution of the State of Maine, Article 1, Section 6a., Maine

1. Article 1, Section 6a of the Maine constitution provides:

"...nor deny to any person due process or....equal protection of the law"

a. Plaintiff was not allowed to threaten and retaliate against witnesses. Plaintiff was not allowed to lie at will, both in sworn and unsworn statements. Plaintiff's attorney was not allowed to make known false statements in sworn fee affidavits. Plaintiff was not allowed to harass the Defendant incessantly, pervasively and continuously throughout the more than five years Judge Field controlled the case. Contrastingly, Judge Field placed a protection from abuse order against Plaintiff when no evidence of abuse existed and hundreds of hours of taped conversations proved otherwise. Judge Field then went on to prove in his own order that he knew the allegations were false when he ordered Plaintiff and Defendant to continue physical contact twice a day and to cohabitate the same home. Plaintiff sought recovery of fees and Judge Field refused to even consider these appropriate requests. At the same time, Judge Field gave tens of thousands of dollars in fees to the Defendant and her attorney, even after being informed of the false sworn statements in the Defendant's attorney's fee affidavit. Judge Field routinely issued thousands of dollars in fee orders for the Defendant while refusing to allow Plaintiff to view the details of the charges and respond to same (violation of case law as well). Defendant was

allowed to file whatever motions she chose, frivolous or not (and many were frivolous). Plaintiff was not allowed to violate Maine or Federal laws, and certainly knew he could not count on Judge Field aiding and abetting this type of conduct as he repeatedly did for the Defendant. Plaintiff did not know at the onset that Judge Field and the Defendant had been communicating long before the onset of the divorce, nor that Judge Field had issued protective orders for the Defendant prior as well. Judge Field did not disclose this information. The facts were found in discovery (Plaintiff's exhibit 3 and 4). Judge Field has a responsibility to report any wrong doing by an attorney by Judicial Canon (Canon 3D(2), cannot be any more specific and to the point:

> "A judge having knowledge that a lawyer has committed a violation of the Maine Bar Rules that raises a substantial question as to the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects shall inform the Board of Overseers of the Bar or other appropriate authority and may take other appropriate action."

Judge Field should have informed the Maine Attorney General as well, given the false statements were a crime in Maine. However, Judge Field's only action to punish this action on the part of the Defendant's attorney was to award her $20,000.00 in fees.

b. Plaintiff entered this litigation seeking to free himself from an emotionally abusive wife. He was not primary wage earner but was incontrovertibly primary care giver. He had no job and all of his assets were under the control of the Defendant or in the marital residence. As a result of the actions of the District Court, Plaintiff was stripped of his children and all rights relating to same.

Plaintiff was thrown out on the street without support or means of support. Plaintiff was ordered to return to the marital home every day to care for the minor children and be further abused by Defendant. It strains belief that such an order would have been issued against a female.

c. The Court allowed the Defendant to lie at will, as well be seen hereinbelow. These lies benefited the Defendant to the detriment of the Plaintiff (Potter's Post Trial Brief). The Court allowed the Defendant to abuse process by filing multiple motions, many within days of a previous being denied, seeking exclusive use of the marital home (Potter's Mischaracterizations of trial issues in Attorney Scheffee's [sworn] fee affidavit).

d. During a hearing on November 15th, 1995, Judge Field deliberately acted to destroy both the content, submissions and testimony of Plaintiff by making plaintiff jump all over to satisfy repeated requests by the court for data that was not related to the facts Plaintiff was presenting. Judge Field also arbitrarily set time frames after which he would not allow physical evidence to be entered, even though it directly related to years of continued interference in visitation, violation of orders and contempt of court.

B. The Maine constitution,

Article 1, Section 6, Maine
provides:

> "to have compulsory process for obtaining witnesses in his favor...."

a. Plaintiff reaffirms the allegations made previously regarding the facts surrounding the manner in which Judge Field dealt with the criminal tampering, including the exhibits named and attached.

C. The Maine constitution, Article 1, Section 6a provides:

"... speedy, impartial trial"

a. Plaintiff reaffirms the facts previously set out above regarding this matter.

D. Article 1, Section 23 of the Maine Constitution provides:

"...the appointment of which shall be for a longer time than good behavior"...

a. Judge Westcott laughed about Plaintiff's issues at a pretrial conference. Judge Westcott has a relationship with the Defendant. Churchill and Westcott have evaded attempts to determine the exact starting time of that relationship in both Federal and Superior Courts. Churchill admitted after a motion to compel discovery that she thought it started sometime in 1994.

b. The totality of conduct described and attested to elsewhere herein attests to the behavior of both Judge Westcott and Judge Field.

"No judge should preside in a case in which he is not wholly free, disinterested, impartial and independent (Bernard (1979), ME 408 A.2d 1279)"

III. OTHER DEMONSTRATIONS OF BIAS/PREJUDICE

In addition to those specific acts or omissions stated elsewhere herein, Plaintiff submits the following examples of Judge Field's prejudicial conduct:

A. Judge Field expounded at length at a hearing, in extremely sarcastic tones, regarding the fact that he would issue final judgment, only to have this statement objected to by the Defendant. This in response to his refusing to set aside the deed of the property based on the findings of a Superior Court Justice.

B. Judge Field thereafter denied the motion based on "dower rights" of the Defendant, when in truth, the objection was simply one more act of extortion by Defendant to gain Plaintiff's agreement to cease his appeal of the financial matters.

C. Subsequently, the Defendant changed her mind and sought final judgement herself. At the hearing on pretrial on September 16th, Judge Field's tone to the defendant regarding this request was one of the benevolent father seeking to soothe the hurt of a daughter (Plaintiff's 7, paragraph c, plus tape of hearing). This document also discusses Judge Field's sarcastic statement regarding Plaintiff's annulment (at d, third paragraph).

D. Judge Field twice stated that if the Defendant's went to the referee and obtained a change (one in financial aspects and one in summer visitation) that he "would set you back where I put you." They did, he didn't.

E. Defendant sought a motion for contempt and sanctions. Judge Field stated there was no contempt, then went on to order sanctions as fees of approximately $4000.00 anyway.

F. Judge Field participated in exparte communications with Plaintiff's first attorney at a cocktail party, clearly giving the indication that he had already decided on the case, this weeks before the trial even ended.

G. The defendant had sat silent when her attorney stated to the courts that she had nothing to do with the censure of Mr. Lorbeski. When it was proven that she was communicating with the town attorney within days of his testimony, thus proving she lied, Plaintiff's attorney brought this up to Judge Field, who refused to act.

H. In response to Defendant's repeated tax fraud and forgeries, Judge Field stated "he knew a lot of good parents who were tax cheats"

I. Judge Field accepted a hand written postit from Defendant's attorney in court which falsely alleged Plaintiff was not paying the guardian.

J. Judge Field repeatedly gave defendant all the time she wanted while denying same to Plaintiff. This included allowing Defendant to expound virtual stories as opposed to answering questions while on the witness stand.

K. The defendant's attorney lied repeatedly in her "facts and Findings". Judge Field, knowing these statements were false, incorporated them in his judgments and orders.

L. The bias of Judge Field is evident in that given all the statements and findings made in the Defendant's fallacious facts and findings, Judge Field changed only one statement, the one requiring the Defendant (earning tens of thousands more than the Plaintiff) to pay for medical insurance (free to her from work). Judge Field changed this provision to have the Plaintiff pay this insurance. (Plaintiff's 20, page 6, bottom, and Scheffee's "facts and findings", in the record).

M. The judge heard overwhelming evidence by expert witnesses that I was the primary provider for the children and the defendant was the primary provider. The judge listened to a witness who was one of three newspaper reporters who published a story regarding the defendant bragging about this being the arrangement. (Less than two weeks after testifying, this witness who lives in the town the Defendant manages, had a moat dug around her home in retaliation for her testimony and would not return to court the next time because of the court's unwillingness to protect her). The judge in open court acknowledged this fact when he stated "if I put a wig him and a business suit on her I would have the average Aroostic county family?", was told yes by the expert witness. It was uncontrovertible that this was true, and yet the judge ruled in favor of the defendant where custody and parental rights were involved.

N. Judge Field found Churchill in contempt but denied an identically based motion for protection from harassment.

O. Judge Field routinely orders huge fees be paid by Plaintiff while not requiring Scheffee, a known and proven liar who has no qualms about making false statements in affidavits, to provide any detailed billing. Judge Field

orders payment of fees by Plaintiff whether Plaintiff is successful or not.

P. In a hearing in Superior Court on April 17th, the presiding Justice stated that without any doubt, the appellate court should order the remand of this divorce case to a judge other than Judge Field, and specifically, a Judge who knows nothing about the case.

Q. Judge Field refused to admit evidence in the form of tapes that proved the defendant lied, stating he would not allow them to be heard because the defendant's attorney had not previewed them. This in spite of the fact that my attorney told the judge the defendant's attorney the tapes were being held by her, and had been invited for months to listen to them. These tapes demonstrated a defendant who threatened, a defendant who abused the children needlessly, a defendant who continually harassed the plaintiff and his friends. More importantly, these more than 400 hours of tape proved that the repeated allegations by the defendant that the plaintiff was always in a state of rage, hostile and threatening were false. These allegations were the basis for the defendants defense.

R. Judge Field refused to review medical records of the defendant for a period of time when she was locked up in a mental hospital for a violent act, this in spite of the fact that two expert witnesses testified they were still pertinent.

S. - OVERVIEW –

LIES CONDONED AND REWARDED BY THE COURT

(1) The Defendant lied with complete impunity throughout the entire proceedings, including the pleadings to the court. Her problems with the truth and contempt for the court were such that she would lie, be caught in that lie, then continue to lie. When proven to lie again she would attempt to change her previous testimony by playing word games and when finally proven the "word games" were invalid she would admit her original statement to the court, guardian, psychometric testers, etc, was not true. She even admitted telling lies to newspaper reporters when she needed an explanation for yet another lie. This pathological lying was one of the major character flaws that caused of the breakup of the marriage. An inordinate need for control and stealing were the other major factors.

(2) The Defendant lied to everyone in the case. She lied to her attorneys, the court, the guardian, the psychometric testers. She had the Richmond police chief who works for lie in police reports and testimony before the court. Niel Ames first attempted to tell the court the Plaintiff was only a labor on the home and swiftly recanted when caught in these lies by attorney Potter and admitted to extensive contribution to the building of the home by the Plaintiff. Nancy Coyne said that she was "terrified of the Plaintiff", and then had to admit she had never met me.

(3) Not one time in the more than 1150 pages of transcript for the trial, nor in any other proceeding before Judge Field, was the Defendant ever warned or in any way punished for this repeated perjury. No mention of repeated perjury, nor indication it was taken into account exists in the judgement. It clearly shows the defendant had foreknowledge that she could lie with impunity. The outcome of the trial clearly showed that the defendant benefitted from her repeated perjury.

(4) The guardian testified to regarding Nancy's character and parenting skills. Her report was completely discredited by two other PHD expert witnesses and the expert witness the Defendant herself called to bolster this fallacious report. Therefore, the only real testimony in this case regarding negative activity on the part of the Plaintiff, or any parenting skills or positive behavior on the part of the Defendant was the defendant herself, who, as will be seen below, lied repeatedly about everything to the point that the entire basis of all her pleadings and testimony was a lie, proven by her own hand. Regardless, the Judge ignored all of this in his judgement.

IV. PARENTAL RIGHTS ISSUES MISHANDLED

A. BEST INTERESTS OF CHILDREN IGNORED

The allocation of parental rights and custody is supposed to be based on what is best for the children , and the test is the welfare of the children (Lovelett v Michael, 1953 149me 73 98 A.2d 546) and should not be based on which party has a cause of action against the other (Grover v Grover, 1947, 143 Me34 54 A.2d 637 AND Roussel v State, 1971 Me 274 A.2d 909 AND Dumais v Dumais 1986, 152 Me 24 122 A.2d 322). Judge Field's judgement gave total rights and responsibilities and all but two weekends custody per month to a person who was not primary caretaker [by agreement of the parties], who was neglectful of the children, repeatedly attempted to isolate the children from the father by various means, was a proven liar, forger, criminal witness tamperer, had a history of hospitalization in a mental hospital for a violent act and, who many witnesses, physical evidence and actions on her own part showed that when Nancy dealt with other people she was arrogant,

needed always to be right, needed to be in total control, and was unable to listen to people with a viewpoint different from hers. She is destructive and manipulative in her dealings with persons. She manufactures her own reality and attempts to destroy anyone who doesn't agree with her or who gets in her way. She is unable to listen to those with a view point other than hers. She has a reputation of not being a truthful person in the community. The above witnesses were fearful of retaliation from Nancy on account of their testifying. He did this instead of giving any rights and reasonable visitation to the uncontroverted primary provider who demonstrated none of the anti social traits of the Defendant.

B. PREFERENCE OF CHILDREN IGNORED

The preference of the children should be given heavy weight in determining custody (Grover v Grover, 1947, 143 Me34 54 A.2d 637). The preference of the children was made known in many ways at several hearings and in several pleadings and is documented elsewhere within. Judge Field ignored this testimony.

C. ALLOCATION OF PARENTAL RIGHTS AND RESPONSIBILITIES

Because of his incontrovertible bias, Judge Field completely ignored the evidence in rendering his decision on Parental Rights and Responsibilities.

D. CAPACITY OF EACH PARENT TO COOPERATE OR TO LEARN TO COOPERATE IN CHILD CARE

Only Jim has the capacity to cooperate or to learn to cooperate in child care. For more than four years since declaring Plaintiff was not fit for any parental rights or responsibilities, Judge Field has ignored evidence after evidence, year after year, that the Defendant is not capable of cooperating or able to learn to cooperate. More important, Judge Field has refused opportunity after opportunity to force the Defendant to change her ways.

V. INTIMIDATION OF PLAINTIFF AND PLAINTIFF'S ATTORNEY

In addition to those examples already discussed in detail elsewhere herein, Plaintiff submits these additional demonstrations of Plaintiff's attorney's reluctance to suffer the wrath of a judiciary, even when the acts deserve the attention of the attorney:

A. Plaintiff's attorney, Judy Potter did not file a motion for relief of Westcott's order pending divorce [abuse of discretion, contrary to common sense and extraordinarily adverse to plaintiff] and his refusal to correct the injustice [stating nothing had changed] after motion to reconsider. This motion for relief, once denied by Westcott, could have been appealed all the way to the US Supreme Court as an example of sex discrimination [no female "mother" would have been so treated.

B. Plaintiff's former attorney, Judy Potter, refused for many months to file a motion to recuse Judge Field. Even when she did file same, it was watered down and non-specific. Only after much urging and too late to stop further abuse by Judge Field did attorney Potter finally file a more comprehensive Motion to Recuse.

C. Plaintiff's former attorney should have filed a motion for relief of the denial of the Motion to Stay Divorce in order that Plaintiff could appeal the denial which would certainly have come from that motion in Judge Field's court as well. She did not.

D. Plaintiff's former attorney, Judy Potter, repeatedly told the Plaintiff to stay out of Judge Field's court because he "did not like us", "would find some way to rule against us", etc. Plaintiff has these discussions on tape, as well as having witnesses thereto. Obviously, either Plaintiff's former attorney did not report this unethical conduct to the Committee on Judicial Responsibility, or they failed to act on that information. One result of this fear of Judge Field was Plaintiff's agreement to an agreed order regarding harassment of the other party by either party. This order was submitted instead of taking the Defendant to Court and proving she had no evidence, and in fact, that nothing had ever occurred to support a protective order.

E. Plaintiff's attorney allowed Judge Field to terminate the hearing for the guardian's motion to withdraw without allowing Dr. McLynn to testify [see Appendix A, Item 1], knowing full well that she would testify to the guardian's problems with logic, ethics and process [see Plaintiff's motion in support of the guardian withdrawing]. Judge Field had a long term, undisclosed relationship with the guardian.

in word or outcome of a single fact contained in Plaintiff's seventy page Post Trial Brief [truthful of the facts]. His decision was unjust, cruel and contradictory to the evidence, common sense, Federal and State Law. Appellate review of custody is limited to abuse of discretion (Russell v State 1971, Me 274 A2.d AND Lovelett v Michael, 1953 149Me

73 98 A.2d 546). The test of abuse of discretion was established in Grover v Grover 1947 143 Me 34 54 A.2d 637, and basically states that there must be evidence in the record to support the decision, and if such does not exist, the finding is in error and an exception lies. Judge Field basically stated that all things were equal until the Plaintiff stuck his tongue out at the Defendant's attorney. His decision relative to parental rights and responsibilities took all rights away from the father who raised them since birth by agreement of the parties; against whom not one single piece of evidence could be found to indicate that he was not an outstanding care giver; whom Dr. Brian Rines stated was the best male parent he had seen in his twenty year career; who even the defendant, after every form of slander and all possible forms of deprecation of the Plaintiff as a husband, father and human being, had to admit when faced with the hundreds of statements written in her own hand that he was indeed, a good father, and gave every single right and all but 4 days visitation per month to a proven sociopath who had committed repeated perjury, abuse of process, criminal witness tampering, multiple extortionist, who admitted not one but two Federal tax forgeries on documents containing tens of thousands of dollars in tax fraud, and was proven by testimony and other evidence to have been repeatedly neglectful of the children. The fact that this case has gone on so long is a benefit in one manner, in that it allowed the defendant to continue her sociopathic acts. The evidence and pleadings to the Court will clearly show it is the Defendant who pervasively will not and cannot foster frequent contact between the Plaintiff and the minor children. The pleadings also show continued mental abuse of the children as well as other abuses by the Defendant. The Plaintiff should have been given custody with liberal visitation for the Defendant for the following reasons:

VI. INTERFERENCE IN VISITATION AND HARASSMENT HAS BEEN KNOWN TO THE COURT FOR YEARS AND IGNORED

Telephonic interference had been going on since the children were old enough to talk on the phone. Plaintiff complained to Churchill and the Court. Churhill responded once in writing as far back as 1993 that "I don't often answer the phone so you'll need to leave a message and we'll call you back before bedtime" which she seldom, if ever did/does. In addition, the Court should note that the additional days visitation referenced in this letter come a few days after a hearing had been set to Stay the divorce. These additional days when Defendant would be out of town, reflect, along with the Order upon reference which forced Defendant to give Plaintiff the children on many other occasions when she would be out of town (Plaintiff's Exhibit 17, providing an additional five weeks visitation when Defendant had already planned to be out of town and could not care for the children) the high frequency of times when this situation occurred (and the number of times Plaintiff was generally denied that right) (Plaintiff's 15 and 16, which also reflect scheduling events during times Plaintiff would have visitation.) The court was also informed and acted on attempts by the Defendant to interfere in Plaintiff's vacation time with the children (Plaintiff's 18). The referee dealt with the interference in visitation and the court encorporated this reference order (Plaintiff's 19). As late as Marach 18, 1995, Churchill was brazenly interfering in every aspect of Plaintiff's visitation (Plaintiff's 21). The Defendant was prohibited from harassing in the order pending divorce (Plaintiff's 13, dated 1991); in the judgment (Plaintiff's 20, page 11); the consent order; and of course, the contempt citation order. In addition, the following was available to the court:

A. Plaintiff's Motion for Contempt, August 7, 1992, paragraph 8 reads:

> "Further harassment occurs when in violation of an agreement negotiated between the parties and in violation of Plaintiff's expressed wishes, Defendant hires babysitters for the children rather than permit the father to care for them."

B. Plaintiff's Motion for Contempt, October, 1994, Paragraph d. reads as follows:

> "Plaintiff has always offered to care for the children anytime Defendant is so frequently out of town.
>
> (1) Defendant routinely has family members come to watch the children, including one whose extremely elderly father also had to come.
>
> (2) Plaintiff was only offered the opportunity when Defendant could find no other means."

C. Plaintiff attempted to have this harassment stopped by the arbitrator. The arbitrator included a provision in the Order Pending Divorce, Dated 9/26/94, paragraph 5, which states:

> "Whenever either party is going to be away from his or her home overnight without the children when the children are in residence with that party, the other party shall have the right of first refusal of caring for the children and having the children staying with them".

D. Judge Field, refused to hear the first contempt motion, stating he did not want to try the case twice. On the second motion, Judge Field stated he would not hear the motion for another six months, thus further delaying Plaintiff's appeal.

E. The Defendant repeatedly isolates the father from the children by use of a telephone answering machine which she uses to take all of his calls, refusing to return same more than 200 times in less than 12 months.

F. Plaintiff's Motion for Contempt, Dated October, 1994, Paragraph a states:

> "Defendant routinely denies Plaintiff access to the children over the telephone by using an answering machine.
>
> > (1) This practice has been used effectively for up to a week at a time, for up to as many as 200 calls per year.
> >
> > (2) The children are so used to hearing the phone ring off the hook that they do not even comment on same.
> >
> > (3) When asked why they do not answer the phone, the children state "mommy doesn't like to answer the phone".
> >
> > (4) Plaintiff leaves messages on the answering machine. The children seldom get them.

(5) Plaintiff has attempted to resolve this problem on many occurrences. Plaintiff has letters from Defendant stating she would either answer or call back. Of course, neither happens unless the children are so upset they are a problem for her".

G. During a recorded and witnessed conversation with the children in February, 1995, both children stated that "we hear the phone and we say 'it's daddy, it's daddy!' but mommy says 'don't answer it, it is my business, not your daddy'. Thus preventing the father from talking to the children.

H. In a witnessed telephone conversation in February, 1995, and corroborated by subsequent conversations, the Defendant was heard talking to her sister on another telephone line while the children were talking to the father. Obviously, the Defendant keeps the regular number known by the Plaintiff for the answering machine so that she does not miss desired calls.

I. Judge Field stated that he would not hear this motion for six months or so as a threat to delaying Plaintiff's appeal. Plaintiff therefore, to advance his appeal, withdrew the motion.

J. Plaintiff attempted to have this harassment stopped by the arbitrator. The arbitrator included a provision in the Order Pending Divorce, Dated 9/26/94, paragraph 3, which states:

"When the children are staying with one party the children shall be permitted private telephone contact

with the other party during the following times and on the following days..."

K. Plaintiff's Motion for Contempt, Dated October, 1994, Paragraph a states:

> "When Plaintiff has the children, Defendant calls every day. She did so even during the five weeks Plaintiff had the children for summer vacation. This is harassment."

L. The Defendant's desire to isolate the children from the father is so great that she would hurt the children to continue doing so. Plaintiff's motion for contempt, dated October, 1995, paragraph 12b states:

> "The extent to which the Defendant will go to destroy the Plaintiff's relationship with the children and continue her use of the children to persecute Plaintiff can be shown in the fact that, while under court order to have the children available for Plaintiff to call between 5:30 and 6:00 on Monday, the day before she was to leave for Australia with the children for five weeks, Defendant would not answer the phone, placing Plaintiff and children in the position of not even being able to say good bye to each other. What kind of mother would do such a thing to her children?"

M. Plaintiff's Motion for Contempt, dated August 7, 1992,
paragraph 7 states:

"Defendant has continually harassed the Plaintiff by removing from the children the things Plaintiff has purchased for them"

N. Plaintiff's Motion for Contempt, Dated October, 1995, paragraph b states:

"Defendant routinely sits immediately by the children as they talk to their father, correcting things they say and preventing them from talking freely. At times, Defendant will walk away and the children will start talking about something. When defendant returns, the children stop talking."

O. Plaintiff attempted to have this harassment stopped by the arbitrator. The arbitrator included a provision in the Order Pending Divorce, Dated 9/26/94, paragraph 3, which states:

"When the children are staying with one party the children shall be permitted private telephone contact with the other party ..."

P. Plaintiff's Motion for Contempt, Dated October, 1995, paragraph c states:

"Plaintiff arranged with his employer to get part or all of Fridays off on the weekends he gets his children. Plaintiff then attempted to pick up the children early, as provided by the order.

(1) Defendant would make excuses for why the Plaintiff could not do so.

(2) Plaintiff started telling Defendant well in advance.

(3) Defendant, who is self employed, started taking the children to horse back riding lessons on Friday afternoons so Plaintiff could never have the children early."

Q. Plaintiff attempted to have this harassment stopped by the arbitrator. The arbitrator included a provision in the Order Pending Divorce, Dated 9/26/94, paragraph 6, which states:

"The Defendant shall make every effort not to schedule the children's lessons or activities on afternoons when the Plaintiff is picking up the children."

R. This is not the only way in which the Defendant makes problems for the relationship between the children and the parent. Plaintiff's Motion for Contempt, dated October, 1995, states:

"Defendant routinely tells the children not to tell their father about things at home. The latest issue was when it became apparent the children had been to the doctor and their "blood was no good". Plaintiff asked how they knew this, and why they were so concerned with which vegetables contained iron. The children immediately fell silent, eventually telling Plaintiff that their mother had told them not to tell him."

PRAYER FOR RELIEF

Wherefore, Plaintiff prays that Judge Field will recuse himself from any further proceedings in this case and turn the matter over to a less prejudiced, biased Judge for disposition. In the alternative, Plaintiff requests permission of this court to file a complaint in Superior Court for injunctive and declaratory relief against Judge Field for violation of rights, guarantees and law as based on the contents herein and any other conduct from the record or evidence from other litigations, as well as permission to file a complaint with the Committee on Judicial Responsibility and disability, based on the same factors. Plaintiff further requests that this case, for very obvious reasons, not be turned over to Judge Westcott, nor left in the Wiscasset District Court at all. For three years, Plaintiff has traveled from Alfred, ME to Wiscasset while Defendant traveled a few minutes to court. Plaintiff requests this matter be transferred to the District Court in Springvale, ME, and the appeal forwarded to York Superior Court, Alfred, ME.

Respectfully submitted:
October 7, 1996

_____

James W. Vogt
Plaintiff, Pro Se
RR1-95A
Alfred, Me 04002
324-9105 days, 490-2901 evenings, weekends

Perjury Condoned by Field, Appeals Process

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(a) As has been stated, before the children were born, their parents had agreed upon who they should be raised and who should be their primary caregiver. Nellie Blagdon testified that she interviewed Nancy about her career and life for a newspaper article about Nancy before the children were born (See Transcript, VolII, P80, Line 9). She recounted that Nancy stated on no uncertain terms that Jim would be the person who would be building the house, who would stay at home and care for the children while she worked, and be the primary caregiver for the children. In fact, this was but one of four articles in papers, including a special feature in the Boston Globe which attested to this agreement.

(b) Jim corroborated this fact (See Transcript, VolV, P100, line 12) and even Nancy had to agree after several attempts to lie or misrepresent her other responses (Transcript Vol IX) P66). Not surprisingly, therefore, the children became very bonded to Jim and Jim became very bonded to the children (Transcript, Vol IX, P80, not bonded to Nancy, Vol IX P101, line 17. This bonding continues up to the present time. Nancy admitted on direct testimony that the children need a person in their life with whom they feel bonded (Transcript, Vol IX, P80, Line 24 through P82, line 12. Based on the history of caregiving in this case, this fact should be of no surprise to anyone.

(c) If witness Deborah Kasper had not been threatened away from the Court by the Defendant, this long time family friend would have testified to both the agreement, how the Defendant often bragged about same,

and how it was, in fact, the practice since the birth of the children.

(d) Peter Tambone, longtime next door neighbor and friend of Jim and Nancy, testified (Transcript, VolII, Page 7 line 2 through 25) that he saw the family almost daily before and after the children were born. He testified that Jim did all of the household chores and basic housekeeping. He was clear that Jim was always the primary caregiver of the children. He testified that Nancy worked full time and was routinely out of the house several evenings each week before and after the children were born. His observations are corroborated by other facts. It is uncontroverted that after the children were born Nancy obtained her school superintendent certificate (Transcript, VolIX, P56, line 23 through P58, line 24), did outside consulting, took her LSATS, applied to law school, and participated in a leadership role in a number of community groups. Nancy Coyne, Nancy Churchill's good friend, described all of the weekend activities she did with Nancy (Transcript, VolV, Page 3, line 7 - Page 55 line 5). She admitted that Nancy was active in a number of community groups in addition to her job. Nancy Coyne, being a good friend, was [not unexpectedly] effusive in her glowing description of Nancy's mothering abilities. In this regard, it is interesting to note that she is the only person to say this to the Court. Apparently, Nancy does not have a lot of friends or neighbors who can attest to her mothering skills. One reason is obvious: she was not and never has been the primary caregiver of the children or the person who was the nurturer in the children's lives. Thus, it is no wonder that few people saw her in this role. The Court should be aware that Nancy Coyne's credibility is seriously in question because she lied about attending a lesbian woman's conference with Nancy Churchill (Transcript Vol

V, P53, Line 24 through P54 line 1) as Plaintiff has a card signed by Nancy Coyne telling Nancy Churchill how good it was to see her there.

(e) Quite the contrary, there is evidence that the children developed problems while in Nancy's care (Transcript, VolII, P[illegible], line 20). Peter Tambone saw serious raw rashes on the children's bottoms. Amy Nailor saw this condition as well (Transcript, Vol II, Page 40, Line 4). Nancy claimed that the children had a problem with diaper rash. However, according to the diaries that Jam and Nancy kept, this is not true. Nancy wrote in her diaries (Vol IX, Page 76, Line 6) that Jim insisted on using cloth diapers and that the children had no serious diaper rash problems with them.

(f) Jim and Peter Tambone testified that the children suffered serious separation anxiety when Jim left them in Nancy's sole care (See A 1 and 2 above, as well as Transcript Vol V, Page 64,line 1) and this problem continues. Nancy's own testimony indicates that the children are having serious problems while in her care. These admissions came not only during the trial, but months afterwards when she sought the assistance of Dr. Drach (Drach's testimony, Transcript) to deal with what she called "the problems of the children". She testified at trial that she observed a number of behavior problems in the children (Transcript . Obviously, her observations of the children were made while they were in her care. Nancy testified that the children were overly-bonded to one another and have stunted social development (Transcript, Vol VIII, page 8, line 5 and page 7 line 10). She stated that both children have control issues. She blames these problems on their "primary playmate" being Jim (Transcript, "severe pathological behavior", Vol VIII, P13,Line 14, "took them four days to crawl into my lap" Vol VIII, Page 13, line 23 through P14, line 10).

[In this regard, it should be noted that it was Nancy who originally insisted that the children be cared for at home, according to her own reluctant admission on cross-examination when confronted with her note to that effect (Transcript Vol IX, page 38, line 15 and page 43 line 8).] A more logical conclusion to reach insofar as bonding is concerned is that the children are more bonded to Jim and to each other than they are to Nancy, and that it is these facts that are causing her discomfort (VolVII P14, Line 21). This conclusion is supported by the fact that Dr. Rines noticed no such "over-bonding" or "control" issues (Vol IV, Page 20 line 7 through P21, line 2) during the six hours he observed the children with Jim. Nancy complained that the children were developmentally delayed in their language usage. Dr. Rines noticed no such developmental delay manifested when the children were with Jim. Nancy testified that the Robin had problems with self control and controlling his physical behavior. Dr Rines noticed no such problems (Transcript, Vol IX, Page 106, line 25) when he observed Robin with Jim. Nancy testified that Zoe was dependant, compliant, hesitant, vulnerable, reticent, withdrawn and at the same time bossy and controlling. Dr. Rines noticed no such problems when he observed Zoe with Jim. Nancy testified that Zoe had a serious eating problem (Transcript, Vol VIII, page 38, line 4 - line 13) and that she was not thriving weight-wise. Jim testified (Transcript, Vol IX, page 109, line 21) that she ate lie a horse when she was with him. One might wonder why Zoe does not eat when with Nancy. Nancy's recountation of the "first week she and the kids were alone together" is enlightening. First of all, it is interesting to note that prior to this week, Nancy had, by her own admission, not spent substantial periods of time alone with her children. Second, Robin's behavior during this time is indicative of problems existing between

him and Nancy. He would not let Nancy hold him (Vol III page 13, line 23 through p14, line 10). He did not want to touch her. It took him four days to climb on her lap (Transcript, Vol IX, page 24, line 17, etc.). Of course, Nancy blames the fact that Robin maintains a distance from her on the stress of the divorce created by Jim (Vol VIII, p14) and takes no responsibility for causing the behavior. Contrarily, Dr. Rines observed no such reluctance in either Robin or Zoe to be physically affectionate with Jim during the six hours he observed them with him (Transcript, Vol IV, line s 8-10, page 20). His observations of the children occurred during the same time periods, during the parties separation and divorce, during which Robin was refusing contact with Nancy. Nancy testified that the children were troubled by the transitions between parents. Jim and Peter Tambone observed (See Transcript, Vol V, P64, line 1 through p65 line 16) that the problem the children had with the transitions resulted from their being separated from Jim, there primary caregiver. The tapes Jim made of every transition also prove this to be the case, and prove that Nancy never took any steps to relieve this anxiety. Cathy Markland testified that these problems with separation anxiety, including hiding in bedrooms when their mother comes to pick them up, to throwing themselves on the floor was occurring well into their fifth birthday. It should also be noted that when Nancy came to pick the children up from being with Jim for five weeks neither were excited about her return, ran to her or asked to be picked up by her. On the contrary, when Jim picks the children up for his alternate weekend visitation the children jump with joy and cling to him. It takes a effort to get them to get dressed to leave. At the same time, when Jim has the children, even to this date, they will not leave his side. The only conclusion any rationale human

being could make from this evidence is that the children were, and continue to be, much more bonded to Jim than to Nancy. Therefore, when the children are with Jim, they do not demonstrate the abnormal behavior which Nancy observed when they were with her.

(g) Other matters about which Nancy testified support the conclusion that the children are more bonded to Jim than Nancy. Nancy testified (VolVIII, page 16 through 21) about the children needing a week's transistionary period to a day care center and being very dependent upon their blankets and stuffed animals, so dependent, as a matter of fact, that nancy felt it was necessary to send these animals and blankets down to Jim's house. Dr. Rines noticed no such insecurities in the Children. Jim testified (Transcript Vol IX, Page 109, line 3) that the children have no need of the animals or blankets at his home and that the children are outgoing there, making friends and transitions easily. Nancy assumed in her testimony that Jim has not properly introduced the children to day care and that the children made no friends in Saco. Similarly, although Jim introduced a happy and upbeat approach to potty training, Nancy rejected these efforts because, in her opinion, it was not the "right time" for potty training (Transcript, Vol IX, Page 99, line 2 through page 100 line 5) due to the divorce, using some pseudo-psychology and claiming that the toilet is the only thing Robin had any control over right now (Transcript, VolVII, Page 31, line 20).

(h) Peter Tambone described Jim's care for and relationship with the children (Transcript VolII, page 6 - 9). He told the Court that Jim was a loving and wonderful dad who was absolutely devoted to the children. He stated that as a result the children responded to Jim in a wonderful way. Mr. Tambone testified (VolII page 6, line 16 through page 7 line 6 and page 8 line 7) that Jim was

the primary caregiver and the person who cooked, fed, changed, bathed, and did all of the routine things nurturing parents did for their children. None of the activities with and for the children were grudgingly provided as Nancy claimed to her attorney, Linda Doyle, Ron Braezeale and this court (transcript Vol IX, page 68 line 4 through p79). As was developed on cross examination, Nancy was not being truthful in this regard either.

(i) Jim testified regarding the fact that the behavioral problems reported by Nancy did not occur when the children were in his care, further corroborating the testimony of Peter Tambone, Doctor Rines and, if she had not been scared to testify, Deborah Kasper (See transcript vol9, p106 line17, line 23 and 24). He also stated that Zoe absolutely was not dependent, vulnerable or reclusive (Transcript vol9,p107 line 5 through 9) and in fact, was very outgoing, outspoken, knows what she wants and how to get it.

(j) Dr. Brian Rines, whose credentials and expertise are impeccable, performed and extensive parenting evaluation of Jim's relationship with the children (Transcript, Vol IV Page 16). He was unequivocal that the children should not be removed from their primary custodian. He opined that if Jim were a woman, there would be no question that he would be maintained as primary custodian (Transcript, Vol IV, Page 35, line 15). He described Jim as the best father he has seen in his lengthy career (Transcript VolIV, P81, Line 14 through page 82, line 4). He evaluated Jim and the children in his office as well as in their home. Dr. Rines described Jim's relationship with the children as attached, comfortable and always appropriate. He stated that Jim was humorous with he children and handled any problems that arose very well. According to Dr. Rines, there was structure and stability in Jim's relationship with the children. He sets good limits

and was respectful of the children's autonomy. Dr.Rines testified that there was no doubt that the children were very bonded with Jim.

(k) Jim's therapist, Dr. Kate McLynn testified (and was later the victim of a retaliatory complaint filed by Nancy against Dr. McLynn with her licensing agency in retaliation for that testimony) that Jim was an outstanding father (VolIII Page 46, line 1). Despite the unwarranted efforts of the Defendant's attorney to paint her as a hired gun, there is no doubt that Dr. McLynn's credentials are unimpeachable (VolIII, P4), being a PhD Psychologist from the best schools and with extensive training and experience in the family area. Dr. McLynn testified that Jim's devotion to and nurturing of the children (Vol III page 12, line 1) was not surprising because, according to her, at Jim's stage in life males often demonstrate a nurturing and more home-oriented pattern of behavior when they reach the age of 40 to 50 years (Transcript, VolIII, page 45 line 8, page 95 line 1). She found Jim extremely sensitive to the emotional needs and lives of the children. According to Dr. McLynn, it was important to note that Jim was excluded from the day to day parenting role with his former children and thus, was even more motivated than the usual person to be a good and involved parent (Transcript VolIII, page 92, line 5). Dr. McLynn had a certain amount of knowledge about Nancy's behavior towards and with the children which was received from a number of sources due to the lengthy nature of this lawsuit (Transcript, VolIII, page 78, line 8). As a result, Dr. McLynn described Nancy as a classic secondary caregiver (Transcript, VolIII, P84, line 15, page 81 line 15, P138, Line 24 and page 84 line 8-20), being the parent who is interested in doing many activities with the children rather than the quiet, day to day, individual nurturing that Jim provides as the classic primary

caregiver. This conclusion is consistent with Nancy's own description of the activities she does with the children such as hiking, crafts, enjoying music, and cycling.

(l) It is sad but true that the children will have little opportunity to develop their own unique personalities if Nancy is the primary custodian. nancy discussed her goals for her children in court (Vol VIII, Page 42, line 13). She said she had clear ideas about this and the "kind of people I'd like them to be. She testified that she was prepared to do whatever must be done to cause them to be self-actualized. She wanted them to be concerned about third world countries; make lifetime friends; and realize their full, intellectual and physical potentials. In this discussion Nancy demonstrated little awareness of or sensitivity to the emotional needs of the children. Lynda Doyle could find no fault with Jim's relationship with the children. Her conclusions were primarily based on her erroneous perception of Jim's relationship with Nancy as opposed to his relationship with the children.

(m) Jim's own testimony of his relationship with the children is consistent with the testimony of expert and lay witnesses who appeared in this case. He is unequivocal that he was always the primary caregiver of the children and that was the agreement and arrangement from the beginning (Transcript Vol V, P100, line 12). He descried nancy as being very career-oriented and the children as not being her primary focus. In this regard, it is uncontroverted that not only did nancy work full time after the children's birth, but she was heavily involved in community activities, obtained her superintendents certificate, applied to law school and did consulting work (Transcript, Vol IX, page 56, line 24). This work and her activities often took and still takes her out of the home in the evenings and for as much as a week or more at a time as the evidence showed. For example, according to

Nancy's own testimony she spent 240 hours attempting to obtain her School Superintendents Certificate while working full time!

(n) Nancy's testimony about Jim's relationship with the children is simply not credible, and, as will be seen, is simply not supported by the evidence. She described Jim (Transcript Vol VII, page 143, line 10) as resentful of the time taken away from his professional and other activities when he was the primary caregiver of the children as resigning himself to being the primary caregiver of the children. She further described Jim as conflicted about his parenting role with the children and his professional activities. She testified that she was the only person in the family who attempted to crate a loving relationship with the children and as a result of doing this that she was continually caught in the middle. She testified and stated in pleadings that Jim was in a continual rage, stating that all we do is child care and that he didn't expect us just to care for the children (Transcript Vol VIII, page 13, line 8 "living in a war zone for two years") She testified that in order to cope with this "I" took the kids out for two hours; "I" did everything; "I" put up with Jim's resentment; "I" tried to create a loving family relationship; "I" was forced to work; Jim resigned himself to grudgingly taking care of the kids; Jim only took care of the children while "I" was at work; and "I" did all of the after-hour and evening care (Transcript, VolVII, page 148, line 5, page 154, line 1). According to Nancy, Jim's reluctant and restful relationship with the children only changed when a divorce was in the offing (Transcript, Vol VII, Page 164, line 3, P166, line 5). She further testified that his motivation in finally establishing a relationship with the children was only to keep the children as far away from her as possible and to interfere with her relationship with the children (Transcript, VolVII, page 166, line 22).

Nancy even recounted to the court two examples of what she described as Jim's not accepting children's gifts or cards to him (Transcript Vol VII, page 180, line 16), even though Jim was never informed until after the fact that the gifts or cards were from the children. The real truth was demonstrated to the court when Jim showed to the court a grocery bag full of all the things made by the children that he had collected and kept.

(o) Nancy's testimony about Jim's relationship with the children is simply not true and not corroborated by any other witnesses who testified in this case, professional or otherwise. Jim's actions with regards to the children should speak louder than Nancy's words. His actions demonstrate that Nancy's testimony is not credible and that she is simply recreating history for the benefit of the Court. This re-creation of history is amply demonstrated by the many things nancy wrote in the family journals attesting to the incredible nature of Jim's fathering which have been admitted into evidence and which are quoted hereinbelow. Similarly, Nancy's actions with regards to the children should speak louder than nancy's words. Nancy's actions show that her primary focus is, and has always been, her career and professional achievements just as Jim's actions clearly demonstrate that his primary focus is, and has always been, the care and nurturing of the children. Contrary to Nancy's testimony (Transcript Vol V, Page 010, line 11 and the diaries), Jim was thrilled at the pregnancy and was intimately and unrestrainedly involved in the pregnancy and birth of the children from the start. He continued to be the primary nurturer of the children for all of their small lives.

Fortunately for Jim, both parties kept family journals recording the pregnancy and the children's birth and development. Selections from these journals have been admitted into evidence. A small corduroy diary

recorded the pregnancy and the children's birth. The first forty-two pages of the diary describing the thrill of the pregnancy are written by Jim. These pages are followed by some entries by Nancy. When one reads Nancy's entries which were made before she had reason to describe Jim's relationship with the children in destructive terms, a picture of Jim emerges which is quite different from the one which she is now attempting to foist on this court. During her pregnancy nancy writes in this diary (Transcript VolIX, page 70 line 23): "At first I was so afraid that Jim wouldn't be happy about it, but when I saw the fantastic, happy look on his face when the little stick turned out blue, I knew that he was as happy as I was." (Continuing on Transcript, VolIX, page 71, line 15), "Jim and I talk to them all the time. I wanted to meet them before we gave them names, but Jim is firm on 'we know them already'. It's nice to see him so bonded already. Jim's done a great gob with the house too, so it's more comfortable to be here." "Had a real bad week last week--super cranky... Boo[Jim} was super sweet as usual." "...You [the babies] know how much your father and I love you...we talk to you...Zoe....is daddy's girl in the worst way." "Jim worries all the time about you getting bumped, hurt, or squished." "Jim has been so unbelievably outstanding throughout that I just feel this overwhelming sense of gratitude and awe (Transcript, VolIX, page 72, line 12). "I do not know where the man gets his patience and caregiving from, but I could never have done this without him. He was encouraging, supportive, and fun throughout. We are fortunate to have him." this is followed by a note by Nancy (Transcript Vol IX, page 73, line 9) which states "Your dad has been outstanding throughout. He takes wonderful care of all of us, totes pillows around brings us drinks, tells us how beautiful we are. he's made it all bearable." this is

followed by many pages written by Jim describing the birth of the children at which we was present and assisted. Then Nancy writes "I was going to tell you what it was like being in labor. Now, however, that seems to be a special time your dad and I shared. I don't think I could ever tell you what an incredible, incredible man he is, so loving and caring. It's really fair to say our dad and I were pregnant together and went though labor together. Your dad was just as involved and I really think a lot of times it was harder for him. He had to watch a lot of unsettling things happen to his family, but he didn't let on that any of it upset him and he was a constant source of strength and support throughout. He loved you from the minute he knew you were coming and he loves you more than anyone else in the world." While at the hospital, Jim shared in the care of the children, as well. Nancy writes: "Your dad came back at c:00 am after having a little sleep. He had missed his family and wanted to hold you as soon as possible. he felt especially bad for Zoe who was being held hostage in the nursery. We got Robin to have with us in the room and he spent all kinds of time cuddled with his dad. We'd feed Zoe in the nursery and her dad would change and cuddle her. Your dad went home at night, and I used your schedule that he put together to feed you." Your dad just loves to hold you both and talk to you." this diary ends in October of 1989.

Later the family kept a journal about the children's development. On October 23, 1989, nancy wrote that Jim shared in the feeding and the bathing of the children and that "Your dad wanted you to have cloth diapers so he washes a big load every day or two." She further notes (Transcript Vol IX, Page 76, line 11) that both of the children had almost no diaper rash during this time. On December 3, 1989, Nancy wrote: "What I didn't mention is that your Dad spends tons of time with you throughout the

day and evening, talking and holding you, telling stories laughing." "the truth is that he absolutely dotes on you both. He's the first one to pick you up when you cry. He won't give you up to other people because he loves holding you so much. He talks to you constantly, tells you stories, massages you, and puts all his energy into caring for your. that means he has less time to spend on the things hat he spent time on before. Its a time of major change for your dad and he's trying hard to do the right things for his family. However, he needs to blow off steam and he does it by writing. (Transcript Vol IX, P77, line 16) In real life, he is the most caring, giving person you'd ever want to meet and he absolutely loves you both. You ought to see how he looks when you smile at him." On May, 6, 1990, she writes: "I nurse you then dad [usually] or I trundle off with Robin so everyone else can get some sleep" (transcript, vol IX, page 78 line 2). She further states that "Your dad tries to vary your menu and will occasionally get fruit dessert or something special, but it inevitably turns to have sugar in it so I hide it away." [Apparently, even early on there was no compromising on Nancy's part or sharing in decision making when Nancy did not want something to happen and became aware that her wishes were not being followed to the letter.] Further, on May 6, 1990, Nancy write to the children: "Dad usually takes you upstairs and you play on the futon for an hour or so (Transcript, Vol IX, page 78, line 12). Oftentimes someone ends up sitting in dad's lap and 'helping him' type." On August 8, 1990, Nancy writes: You both love having Daddy chase you on the floor. He taught Robin to say 'varoom, varoom' when he pushes his trucks around. He sounds so funny. Jim pushes him around in his octocycle and he still goes varoom, varoom. This journal covers the period of time from October, 19890, through the end of December, 1990.

When confronted with these diaries Nancy first lied to the court that they had been stolen three years before (Transcript, Vol IX, page 72, line 22). Given that there were entries in her handwriting after that time frame, this was certainly a lie. Thereafter, when confronted with these diaries Nancy attempted to say that t(transcript, Vol IX, Page 86 and page 95, line 19) Nancy attempted to deny their truth by stating to the Court that she was simply trying to keep journals for her children painting their father in a positive light. Fortunately, for Jim, Nancy sent a number of cards to Jim (Transcript, vol IX, page 101, line 7) in which she similarly extolled his virtues as a father. this, it is not true that Nancy's writings in the journals were glowing fabrications for the sake of the children's psychological well-being.

As part of her efforts to deprecate Jim's relationship with the children, Nancy testified (Transcript, vol VII, page 150, line 24) that Jim was so conflicted between making his business go and the children that she was continually being caught in the middle. (Transcript Vol Vii, page 151, line 9) Therefore she decided as a family that she wanted us to go away, therefore she arranged for the family to go to Great Britain. She did this according to her testimony because she wanted no distractions and wanted to get reacquainted as a family unit and she wanted the children to become bonded to her (Transcript, Vol IX, Page 81 line 4) [At this point it should be noted that nancy's planning, insisting on and taking a trip with a six-hour time change with children under one year of age shows her total lack of understanding and indifference to the needs of children that age. As anyone with any closeness to children would expect, the children had an enormous problem adjusting to the time zone and, not surprisingly, cried incessantly for much of the stay in Great Britain.]

Fortunately for Jim the family kept a diary about their trip to England, during the months of September 1990 through October, 1990. Nancy had forgotten this diary even existed (Transcript Vol IX, page 81, line 1). Had she recalled its existence prior to testifying, perhaps she would have testified differently. In this diary nancy writes: "...Your dad gets concerned when we travel..However..no matter how anxious your dad gets, he always is patient with you and cares for all your needs. If you cry, he hugs you; if your bored, he plays with you. He's a pretty outstanding guy." After their arrival in Great Britain, nancy writes: Unfortunately, they [the children] woke up a few hours later and cried inconsolably. Dad got up and got them back to sleep--twice-- even though he was exhausted." She further writes about the children being unable to adjust to the time lag saying "dad finally picked up Zoe and cuddled her in bed. I finally picked up Robin. It hasn't been much fun.. So we just put them in bed with the utter resolve to let them cry it out. Dad is very upset because he hates to hear them cry. I'm not to happy about it either, but I'm not going to stay up all night. It was bad enough that dad did last night." Writing of September sixth, Nancy says of her birthday celebration: "We [Jim and she] then consumed and entire cake as Jim sang happy birthday dear goose. A nice end [to the day]." "We curled up on the floor for the first time in ages, and watched a trashy movie. Robin go up crying and we tried to let him cry it out--but gave in as usual. I nursed him and Jim cuddled him and he fell asleep on Jim's chest". On another evening, Nancy writes that Zoe fell asleep on dad's lap while he sang to her. On another day, Nancy writes that Jim watched the children so Nancy could go out shopping alone. On the twins first birthday, nancy and Jim sang happy birthday to them and they had a birthday party for them in England, according to Nancy recording

in the diary. On September 23rd, Nancy writes that the trip was nice for her. that she as had a chance to get to know the kids better because "I'd gotten to feel that all I did was see Zoe and Robin ad breakfast and dinner and I had little chance to develop a relationship (Transcript Vol IX, page 81, line 23). (Continuing on page 82:) We've been able to do that more. I can read what both of you want much, much better that I did before you left. I feel like we [referring to the children] all know each other better, and have developed a mutual trust and understanding. to me, it's been wonderful having had that time. I've tried to be better about spending time talking to each of you, trying to communicate with you, and not just be a caretaker. It's very gratifying to feel that we're talking to each other. [It is important to note that the children are now one year old when she is making these statements regarding her relationship with them as well as how much time she spends with them on a regular basis.] She further admits that "I just have trouble managing you both at the same time so we haven't gone as many places" (Transcript, Vol IX, page 82, line 16). Clearly, the real reason for the trip was so that nancy could spend more time with the children and develop a better relationship with them because she had become too busy to bond with them with all her activities and her job. She really only had time to see them at breakfast and dinner. this observation by Nancy, made well before she had a motive to lie about Jim's and her relationship with the children, more accurately describes which parent is the most bonded with the children and her more distant relationship with the children. Of course, in Court she attempted to blame her distance from the children on Jim's activities. However, never in any of the diaries written during the relevant time period does she complain about Jim's behavior with the children. the fact of the matter is that

any distancing between nancy and the children was of her own making and continues up to the present time. It is this very lack of bonding between Nancy and the children that caused Robin to refuse to touche her and refuse to sit on her lap for four days when Nancy took the children for a week's visit to her mother's. Jim continues to be the person who has formed the primary nurturing bond with the children. thus, the arrangement that Jim be the primary caregiver which was agreed to by the parties long before the children were born should be continued.

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When the credibility of the witnesses is compared, nancy's testimony should be seriously questioned.

Nancy's testimony contained one misstatement after another. She also has made misstatements to others connected with this case. Some of her misstatements have already been heretofore described. In addition to the misstatements already set forth, numerous others have been made. Nancy or her Attorney advised Lynda Doyle that Jim has not worked in any significant capacity since coming to Maine. This was not true. Nancy admitted that he did work, and his tax records showed more than $60,000.00 in income for that period, in which he also built the marital home. This statement was also made in pleadings to the Court. Nancy told Dr. Braezeale and Lynda Doyle that Jim only became a house husband begrudgingly when Nancy ran out of money. However, the evidence shows that during and after the family was supposedly running out of money, nancy paid off the mortgage in full; made a substantial contribution to her IRA; and arranged a one month's vacation for the whole family in England. Nancy also stated to Dr. Braezeale and

Lynda Doyle that Jim was of little assistance after the twins birth and she testified that she has been raising the children as a single parent for a long time. She further stated that Jim was not the primary caregiver of the children because they were in day care for most of the time the parties were married with children. the exhibits submitted by Jim show that from August of 1988 through August of 1991, the couple wrote checks totalling the sum of $1,028.00 for day care expenses (See Plaintiff's exhibit 4). Jim testified that this sum represented most of the sums paid and that a small amount more was paid in cash during this time period. Nancy presented no documentary evidence showing more checks written for day care expenses or testified to any other accounting of day care expenses. Nancy testified that she did not know about Jim's college education goals. She retracted this when presented with a card she sent to Jim praising him for these goals. Nancy testified (transcript, VolVIII, page 61, 62) that Jim abused his former wives, but testified that she could not recall whether or not she wrote a letter to Jim praising him for his compassionate treatment of his two former wives (Said letter attached as Appendix H, pg 32). Further, under Nancy's version of the facts, Jim must have been very generous to his wives because she claims that he arrived at her door virtually penniless. On the first day of her testimony nancy testified that there was never any agreement between her and Jim that he would be primary caregiver of the children. On the last day of her testimony (Transcript, Vol IX, page 66-68), she qualified this to mean that there was no agreement on the date of the children's conception, having a problem, of course with being confronted with all the newspaper interviews she gave wherein she stated the opposite (Transcript, Vol 9, Page 67). She even went so far as to say she lied to the reporters when she made those statements. She testified

to all sorts of deprecating things about Jim's fathering of the children, only to be reminded that she had written pages and pages of diaries and cards describing just the opposite in great detail. When she saw the journals that she and Jim had written, she said that someone had stolen them three years ago (transcript, Vol 9, page 72, line 20). Of course, the journals contained entries in her own hand well within that time frame. Perhaps she hoped that they had disappeared. She testified that Jim was in a continual rage throughout the marriage. The journals and cards tell another story, and the tapes of every interaction between the parties since early spring of 1991 further show this to be a blatant lie. Nancy testified that when Jim went on vacation, she had no idea where he had taken the children (transcript Vol IX, page 29, line 25, pg 30, line 10). However, Jim found the burnt note he left her with this information on it and Jim testified and documented sending Nancy and her attorney certified letters containing the information, which Nancy admitted not picking up for seventeen days. Nancy testified that Jim had made her an eleven thousand dollar gift before they were married (Transcript, Vol VII, page 68) because she was supporting him during this time. When confronted with monthly checks in sums of $800.00 per month and other checks showing that Jim regularly paid her substantial sums of money, she changed her story to say that these were reimbursement for equipment she bought him (Transcript, Vol IX, page 43). When pressed (transcript, Vol IX, page 47) on what type of equipment, Nancy allowed that it was for their world trip. How expensive could such equipment be? Further, when the dates of employment of the parties are considered, it is clear that at the time of the payment of eleven thousand dollars, nancy had been terminated from IBM and Jim was still working there. Nancy further misstated that Jim deposited some of the money he

supposedly paid to her into his own account (Transcript, Vol IX, page 46)_, but it turns out that these funds were deposited into Joint accounts. Nancy claimed to pay $2000.00 for doctor's bills on behalf of Jim, neglecting to mention that the payment was reimbursed totally with an insurance payment. Nancy admitted forging Jim's name on the 2199 IRS form (Transcript, Vol IX, pge 55,line 18), but denied any other forgeries. It turns out that she also signed his name on a 1040 in 1991 (transcript, Vol IX, page 94), a different year from the former forgery. She testified that she was the sole family provider (Transcript, Vol VIII, page 53, when the documents show that both parties contributed equally to the family (See financial exhibits). She claims that any animosity that exists towards her by any selectman from Richmond is Jim's fault, and she stood silently and let her attorney represent to the Court that the Town resolution against Mike Lorbeski was none of her doing (transcript, Vol IX, page31). She claimed that Jim made no effort to find work, contrary to the documentary evidence demonstrating his efforts in this regard. She still insists that Jim contributed nothing significant to the costs and construction of the marital home, despite documents and testimony to the contrary, even from her own witness, Niel Ames. She lied to the DHS about Jim being behind in Child support which resulted in the DHS sending a letter to his employer suggesting he was a dirt bag who did not pay his support.

(2)

FILED

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No._____

OFFICE OF THE CLERK

In The Supreme Court of the United States

James W. Vogt, Petitioner

v.

Nancy J. Churchill,
Commissioner, Department of Human Resources,
Respondents

On Petition For Writ of Certiorari
To The Maine Supreme Judicial Court

SUPPLEMENTAL APPENDIX,

PETITION FOR A WRIT OF CERTIORARI

James W. Vogt
Pro Se
170 Main St Apt 15
Springvale, ME 04083
207-490-9012

60 pp

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Divorce Judgment

Issued 8 months after trial

Maine District Court

STATE OF MAINE	DISTRICT COURT
Lincoln, ss.	DISTRICT SIX
	DIVISION OF LINCOLN
	LOCATION – WISCASSET
	DOCKET # WIS-91-DV-123
JAMES W. VOGT	)
PLAINTIFF	)
	)
V	) DIVORCE JUDGMENT
NANCY J. CHURCHILL	)
DEFENDANT	)

Notice of the pendency of this action for divorce has been duly and seasonably given according to law. This action was heard before me on October 14th and October 15th, 1992, November 9th, 1992, and January 4th, 1993, at which time the allegations and evidence were fully presented and considered. Plaintiff was present at all hearings, together with Judy Potter, Esq. of Portland his attorney, and the Defendant was present at all hearings represented by Elizabeth J. Scheffee, Esq.and Stephen C. Lunt, Esq. both also of Portland.

Plaintiff's case -in chief consisted of his own testimony and that of Michael Lobeski, Amy Naylor, Emily Blagden, Peter Tambone, Craig Perron, Dr. Brian Rines, and Dr. Kate McLinn. Mr. Vogt introduced fifty-five (55) exhibits, including tax returns, various financial calculations and summaries of his testimony concerning the allocation of property. Defendant's case in chief consisted of her testimony and that of Neil Ames, Nancy Coyne and Mary Gary Kennedy. She introduced twenty-five (25) exhibits,

including tax returns, various calculations, summaries of her testimony on certain points, and photographs of her children.

The court appointed Lynda Doyle as a Guardian Ad Litem for the parties' two minor children, Robin and Zoe, twins barn September 14, 1989. Ms. Doyle testified at the hearing, and her report was admitted into evidence. In addition, by agreement of the parties and in the interest of judicial economy, the Court incorporated into this proceeding the exhibits and testimony from a Protection from Abuse hearing between the parties heard by this Court 30 June 1992, as reflected by the exhibits and judges notes. This hearing had resulted in a finding of abuse, and an Order of Protection issued against Mr. Vogt.

The Court, by agreement of counsel, held the record of this case open until early April 1993 for counsel to submit documents concerning the Nancy Churchill Trust to confirm. title in the marital home. This was done on March 11, 1993. In addition, as requested by the Court, both parties submitted post-trial memoranda. The Court requested Proposed Findings of Fact and Conclusions of Law and a Proposed Judgment. Defendant submitted the requested proposed pleadings: counsel for the Plaintiff failed to comply with that request.

After careful review of all of the testimony and documentary evidence outlined above, the arguments of counsel and their written submissions, the Court hereby ORDERS.AND ADJUDGES to the parties a divorce from the bonds of matrimony for the cause of irreconcilable marital differences.

PARENTAL RIGHTS AND RESPONSIBILITIES

The parties have two minor children, Robin and Zoe, twins born September 14, 1989. One of the two primary

disputes in this case has to do with the allocation of parental rights and responsibilities with respect to these two children.

The parties were married February 15, 1988 in Perth, Australia while on a world tour. Both parties were employed by IBM prior to their departure. On their return to the United States, Ms. Churchill, who has a master's degree in education, was employed by the Portland Public Schools Department and later (and presently) as Town Manager for the Town of Richmond. Mr. Vogt has not been employed outside the home since the marriage. He has earned a small annual income from a computer consulting business which he operates from the home, and he spent a large amount of time in the home assisting the carpenter in it's construction. Just prior to trial, Mr. Vogt found employment in Saco and has subsequently moved to Saco to live.

Throughout the infancy of these two minor children, Mr. Vogt was in the home and primarily responsible for the day-to-day care of at least one of them. Ms. Churchill nursed both twins, however, so she took one child with her each day on an alternating basis. Mr. Vogt also worked extensively on the construction of the house while the children were in their infancy, as well as in a consulting business that he ran out of the home, requiring him frequently to employ both a day-care provider and a cleaning person. There is no question that the Plaintiff loves the children and that this love is reciprocated. In addition, there is no question that he can adequately supervise them.

Despite the Plaintiff's efforts to paint the Defendant as somehow an inadequate mother, the Court finds that she is a loving and careful mother who has a particular ability to assess her children's needs and speak about her children's needs and goals lucidly, intelligently and specifically. There is no question whatsoever that she has been deeply involved in the upbringing of the children, even though she has also worked outside of the home.

The Court heard an inordinate amount of details about the daily lives of these litigants, each detail colored in a different light by respective counsel. It is clear to the Court that each party has good points and bad, and that, on the whole, both are able, caring loving parents who genuinely care for their children, are loved by their children, but who are ~~totally incapable of~~ getting along with each other. This brings us the Court's primary concern in this case.

The primary thrust of the Defendant's case against the Plaintiff was, that while he a good and loving father, his animosity towards his wife is so bitter that he is incapable of allowing and encouraging frequent and continuing contact between the children and the other parent. Title 19, M.R.S.A. Section 752(h). As evidence of this, the Defendant produced the written communications between the two parents while they were engaged in a "bird-nesting" arrangement at the household, wherein the children resided in the family household and parents alternated custodial care at the household. These notes were generally acerbic and did little to enhance the waning good-will between the two parties.

In addition, the Defendant produced evidence concerning formal complaints that the Plaintiff had filed: against her with the New York State Department of Internal Revenue, the Internal Revenue Service, the Maine Department of Human Services, the local Humane Society and her employer; against her therapist to the state licensing agency; his lawyer in Illinois and his former lawyer here, both to the Overseers of the Bar; as well as numerous complaints against the judge who heard the Motion Pending Divorce, which complaints were in the form of letters to individuals, press releases and letters to the editor of the local papers; and even in the open courtroom about her use of the subpoena power to extract testimony concerning confidential meetings of the Board of Selectman of the Town of Richmond.

Plaintiff spent a great deal of time rebutting this point-by-point through his own testimony and the testimony of an expert witness in order to show that these were rational

and appropriate responses to unusual events. Both parties seemed to have made out a colorable case. It is not without reason, however, that our forbears insisted on the right of confrontation and cross-examination a bizarre incident occurred during the direct examination of the Plaintiff by his counsel that crystalized the evidence of this case and cast the personalities of the respective litigants in a clear light. During a lull in the examination,, while his attorney was examining her notes, Plaintiff, with some relish, stuck out his tongue at counsel for the Defendant. The Plaintiff's explanation of this was that "She had been staring at me, and I just had to do it" or words to that effect.

What makes this incident so enlightening is that we are not dealing in this case with an overwrought teenager involved in a spat with his ex-girlfriend, but rather with a mature and intelligent professional man in his late forties who by all rights should be a leader in his community.' That he should stoop to this level of behavior, especially in the very forum in which the future of his parenting relationship is being decided, shows that his animosity towards his wife is so bitter and so deeply ingrained that he is totally incapable of controlling his impulses, and that, at this stage, he is totally incapable of meaningful communication concerning the welfare of his children with his wife. This requires the Court to interpret the various incidents testified to in a light more favorable to the Defendant. Directing our attention to Title 19, M.R.S.A. Section 752(5), it is therefore clear that the Plaintiff does not have the capacity "... to cooperate or to learn to cooperate in child care;" Title 19, . M.R.S.A. 752(5)(1); or the ability to cooperate and resolve disputes, Title 19, M.R.S.A. Section 752(5)(J); and further the Court could infer that he has less capacity to "...allow and encourage frequent and continuing contact between the child and the other parent, including physical access;". While these are not the only factors to be considered, all of the other factors seem to come out in even balance, and these tip the scales in favor of one course of action.

The Court finds that this is substantial evidence that jointly shared parental rights and responsibilities should

not be ordered, and therefore declines to do so. It is therefore ORDERED that sole parental rights and responsibilities be, and hereby are, awarded to the Defendant, with primary residence of the-children to be with said Defendant.

Given that the Plaintiff has moved to the Biddeford/Saco area for both employment and residence, the visitation scheme requested by the parties will not be workable. The court therefore enters the following with regard to visitation: The right is given to Plaintiff to have contact with and by said children at all reasonable times, including, but not limited to, the following: every other weekend from Friday at 6:00 pm until Sunday at 6:00pm; five weeks during summer; New Years Day, Presidents' Day, Memorial Day, Labor Day, Veterans Day and Christmas Day in odd numbered years beginning in 1993; Martin Luther King Day, Patriots' Day, Independence Day, Columbus Day, Thanksgiving Day and the children's' birthday in even numbered years, beginning with 1994. In any event, Mothers' Day and Fathers' Day shall be spent with the parent of that respective gender, and each parent's birthday shall be spent with that parent. If being with the Defendant on Mother's Day, her birthday or the children's birthday disrupts Plaintiff's normally scheduled visitation, then visitation shall be made up on 'the next following weekend. If being with Plaintiff on Father's Day, his birthday or the children's birthday comes at a time when he would not normally be scheduled for visitation, his next regularly scheduled visitation shall be advanced so that the visitation for the special event satisfies the visitation requirement for the next regularly scheduled visitation. Unless otherwise impracticable, holiday visitation shall begin at 6:00 p.m. the preceding day and end at 6:00 p.m. on the holiday. In the event that the children attend school, the visitation schedule outlined above shall include for each holiday the school vacation, if any, that accompanies it. "Christmas Day" shall mean the first half of the Christmas school vacation, with the other party having the children during the other half of the vacation. Plaintiff shall have summer visitation as follows: 5 consecutive weeks in the summer, beginning

the Friday after the end of school in June on every even numbered year beginning in 1994, and ending on the second Friday before the beginning of school In September every even odd year, beginning in 1993. Weekend visitation shall not occur during the periods of vacation visitation.

The parties shall cooperate to ensure reasonable continuity of the children's extra-curricular activities to the maximum extent possible. Time spent at summer camps and activities of that sort shall not be subtracted from the total time of contact with either party, but rather shall be considered the child's own time.

Transportation shall be the responsibility of the party into whose care the child is being delivered. if that party is unable. or unwilling to physically provide the - transportation and the other party provides the transportation, the responsible party shall reimburse the other party for the transportation at the rate of $.28 (twenty eight cents) per mile between the two parties' homes.

Plaintiff shall provide Defendant with at least three day notice of his intention not to exercise weekend visitation, and at least three week notice of his intention no to exercise vacation or summer visitation, which notices shall be communicated to Defendant personally.

It is further ORDERED that both parents shall have access to records and information pertaining to the minor child, including but not limited to medical, dental, and school records. It shall be the obligation of the party seeking the records to obtain them him/herself.

Defendant is presently employed part time by the Town of Richmond, earning $20,000 for twenty of these hours per week directly from the town. She also earns grant money, this year expected to be in the range of $18,000, for an additional sixteen hours per week. Her estimated income this year will.,be $38,400. Plaintiff is presently employed in Saco, earning $36,000. While this was expected to be a job of only short (less than one year)

duration, this is clearly indicative of his earning capacity, and therefore the Court finds that he is capable of earning this amount on a continuing basis.

Pursuant to 19 MRSA Sec 316, the Court has made certain findings of fact concerning the current parental support obligations as computed under the presumptive application of the guidelines. These findings are contained within the completed Child Support Worksheet which is attached hereto and incorporated herein by reference.

The Plaintiff is ORDERED to pay to the Defendant the sum of $168 per week toward the support of the minor children. Payments are to start 13 August 1993. The components of the parental support obligation are as follows:

Basic support entitlement	$350.00
Child care expenses	$ 112.00
Extraordinary medical expenses	$0

It is ORDERED that the support obligation for the child shall continue until the child attains the age of la, provided, however, that if the child is attending school, then child support continues until the child either graduates or reaches the age of 19, whichever occurs first.

It 'is further ORDERED that the Plaintiff maintain health insurance for the benefit of the minor child, if it is available through employment at a reasonable cost. If he becomes unemployed, he shall notify Defendant immediately, whereupon this requirement transfers to her for the duration of his period of unemployment. If the child is a recipient of public assistance, proof of health insurance is to be provided to the Maine Department of Human Services within 15 days of this Order if Plaintiff/Defendant already has such coverage, otherwise within 15 days of obtaining the coverage or of changing the coverage. It is further ORDERED that all uninsured medical, hospital and other health care expenses of the child shall be paid in the following manner: 48% by the Plaintiff and 52% by the Defendant.

In the event that the child is a recipient of assistance, support pursuant to this order shall be paid directly to the Maine Department of Human Services.

So long as an obligation for child support exists, on or before the first of May of every year the. parties shall exchange either photocopies of their federal tax return or an affidavit concerning their current income. This affidavit shall include the name and address of their employer, the-amount of gross wages and/or salary earned for a typical work week, the amount and source of any additional income, and the amount of gross income received during the preceding tax year.

Any party to this action may request that the Department, of Human Services review the amount of child support herein and take any appropriate action after that review. Upon a showing of a substantial change of circumstances, any party may seek, a ,modification of this Order by filing with the Court a Motion to Modify Child Support.

Any party may appeal this Order by filing a notice of appeal with the Court and, unless the appeal fee is waived Court, paying the appeal fee.

REAL ESTATE -

Defendant purchased the marital home in Dresden in 1988 for approximately $47,000. This purchase money was her non-marital property. The parties then had a house built upon the land by one Neil Ames for $67,000. Plaintiff assisted significantly in the construction of the home. The value of the property is stipulated to be $210,000, with $168,000 in equity.

During the late eighties, Plaintiff was involved in extensive litigation in Illinois with a former spouse about an alimony arrearage and, fearing a lien being placed upon her house, Plaintiff conveyed the property on 12 October 1989 to the Nancy J. Churchill Trust. Defendant's sister was trustee. In April 1990, after the settlement of the litigation in Illinois, Plaintiff began urging Defendant to convey the property to a joint

tenancy. This urging became quite insistent. On 18 April 1991 Defendant finally had the parcel conveyed by the Trustee to herself, and ten days later, after repeated urging by the Plaintiff, she conveyed it from herself to herself and her husband as joint tenants by deed dated 28 April 1991 recorded in During the late eighties, Plaintiff was involved in extensive litigation in Illinois with a former spouse about an alimony arrearage and, fearing a lien being placed upon her house, Plaintiff conveyed the property on 12 October 1989 to the Nancy J. Churchill Trust. Defendant's sister was trustee. In April 1990, after the settlement of the litigation in Illinois, Plaintiff began urging Defendant to convey the property to a joint tenancy. This urging became quite insistent. On 18 April 1991 Defendant finally had the parcel conveyed by the Trustee to herself, and ten days later, after repeated urging by the Plaintiff, she conveyed it from herself to herself and her husband as joint tenants by deed dated 28 April 1991 recorded in the Lincoln County Registry of Deeds in book 1688 at page 146. Very soon thereafter, the couple separated and this litigation commenced.

The threshold question is whether or not there is marital real property to address. After extensive examination of the trust documents, the Court is satisfied that the Trustee had the legal right to convey the parcel to the Defendant and that the children's' interest, if any, were not permanently vested.

Defendant urges the Court to declare the property to be non-marital, with a modest marital component as the result of Plaintiff's efforts and the payment of periodic mortgage payments from the marital estate. She argues this based upon a fraud theory, that the Plaintiff induced her to convey the property when he was fully intending to depart the marriage, solely to increase his marital share. The timing of these events is more than suspicious, and Defendant's position is more likely than not the case, but the standard of proof here for showing that the transfer was not intended as a gift to the marital estate is by clear and convincing evidence. Defendant has not met that higher burden: the property is marital.

Both parties have spent incredible efforts painting their picture of the financial dealing of the parties since the time they first met, dealings which can only be described as labyrinthine at best. Having just emerged from a difficult divorce,. Plaintiff had few assets when they first met, and Defendant was employed, owned a home, and had other assets. They both departed IBM and embarked upon a world tour, getting married in Perth, Australia 15 February 1988. He received a severance payment of approximately $100,000 in August 1988. He worked in his home as a computer consultant and earned approximately $10,000 in 1992. He also spent time building the marital home, received one half of the proceeds of a $42,000 home equity-loan the couple took out to keep themselves afloat during the separation, and borrowed $10,000 on his Mastercard. He also spent over $42,000 on legal fees concerning his various litigation.

At the time that they married, Defendant had just sold a home worth $270,000 (sold just prior to the marriage, netting her $137,.000), in excess of $10,000 in various savings accounts, $6500 in travelers checks, and two IRAs, ultimately combined into one IRA through Massachusetts Mutual. She also had several shares of IBM stock and the tangible personal property itemized in Defendant's exhibits 14 and 16. She soon became involved in litigation with IBM concerning her discharge, from which she netted approximately $10,000 after payment of attorney's fees.

Because this was a short term marriage, the Court, in its decision today, wants to put each party back to the same spot that they found themselves at the time of the marriage. While Defendant spends a great deal of time discussing the money spent by each before the marriage, the Court cannot consider this in its distribution of the marital property, except to the extent that each party contributed non-marital property to the marital enterprise. To this end, and considering not only the respective contributions to the real estate, but the respective contributions to the various retirement plans, the Court allocates $60,000 of the equity in the

marital home to Plaintiff and the balance to the Defendant.

it is therefore ORDERED that the marital home, described in a deed dated 28 April 1991 from Nancy J. Churchill to Nancy J. Churchill and James W. Vogt, recorded in the Lincoln County Registry of Deeds in book 1688 at page 146,.be sold, and the proceeds distributed as follows: after payment of the closing expenses and the equity loan, the Plaintiff shall be paid $60,000, from which shall be subtracted his unpaid portion of the taxes, loan payment, and any child support arrearage existing at the time of the closing. The balance of the proceeds shall go to the Defendant.

The house shall be listed by a local real estate broker doing business in the Dresden area chosen by the parties. If they are unable to decide upon a broker, then they shall each submit to the Court three nominees, and the Court shall decide. The house is to be listed at the asking price determined by that broker, unless the parties, in writing, agree to another price. .,. The house shall be sold to the first ready, willing and able buyer recommended by that broker, unless the two parties in writing agree not to sell to that buyer. Until such time as the house is sold, all of the household expenses, the maintenance, utilities, and the home equity loan shall be paid by the Defendant. Taxes shall be paid by both parties equally.

Personal property is set aside to the party in whose possession the property now rests, who shall be solely responsible for the debt thereon, and who shall hold the other harmless for any damages, including costs and fees for defense, arising from their failure' to satisfy that debt. Each party is awarded the retirement accounts in their own name, and are responsible for the debts in their own name, with the exception of the home equity loan, which was dealt with above.

Counsel for the Defendant shall prepare for the court any qualified domestic relations orders or abstracts necessary to effectuate this judgment.

ATTORNEYS FEES

This case, by all analyses, is not a complex one. While there are two children, they are young, healthy and there are no special problems relating to them other than the basic issue of allocation of parental rights and responsibilities and residence, an issue that is dealt with on a daily basis by courts and lawyers throughout the state. The assets of the marriage are modest, being in greater part the equity in the house, together with two retirement plans, cars and personalty. Taken as a whole, this case shows no reason for requiring special expertise, unusually large amounts of time involvement by counsel or any other unusual expense. While the Court recognizes that animosity exists between the parties, even assuming its worst aspects it does seem to justify expenses too far beyond the normal "'and expected expense of divorce litigation.

After careful examination of the affidavits submitted by counsel, the Court is not prepared to find that counsel fees in this case are reasonable, but rather the opposite3nor is it willing...to accept the usual allocation based upon capacity to pay. In order to award fees in this case, another hearing is required, at which the Court will consider the following: the novelty, complexity and difficulty of the questions involved, the rates charged-"@ by Lincoln County and Portland practitioners of equal experience, reputation and ability of those involved here, and the reasons for any unusual time involvement. Counsel must produce detailed justification for all charges and be prepared to justify them. cf Weinberger et al vs Great Northern Nekoosa Corp. Civil 89-0270-P-C, U.S. District Court for the District of Maine; Fleet Bank vs Joan T. Steeves et al. Civil 91-0076-P-C, U.S. District Court for the District of Maine. This hearing will be held after this case has come completely to rest. In all other respects, this Judgment today is final for purposes of appellate review.

ALIMONY

Neither party is awarded alimony in this case, as each have roughly equal earning power, both parties are employed or are capable of employment, there is no disparate distribution of property, it was a marriage of short duration, and neither party has any unusual future needs.

OTHER ACTIONS

This matter was consolidated for trial with WIS-92 PA-043 and WIS-92-CV-235. The Protection From Abuse Order in the former case is entered in that particular case today. All relief sought in the latter case has been dealt with herein.

RESTRAINING ORDER

It is further ORDERED that each party is restrained and enjoined from vexing, harassing or annoying the other or interfering in any manner, directly or indirectly, with the liberties or independence of the other.

CONDITIONAL ORDER OF INCOME WITHHOLDING

The attached Conditional Order of income Withholding of this same date is incorporated herein by reference and is made a part hereof as though more fully set forth herein.

DOCKET **ENTRY**

The Clerk shall enter the following entry in the docket:

The Divorce Judgment dated 11 August 1993 is incorporated in the docket by reference. This entry is made in accordance with M.R.Civ.P. 79(a) at the specific direction of the Court.

Dated August 11th 1993,
/s#Joseph Field

Joseph H. Field
Judge, Maine District Court

ORDER ON COUNSEL FEES

Issued one year after the judgment and only after Judge Field was sued for due process violations.

STATE OF MAINE	DISTRICT COURT
Lincoln, ss.	DISTRICT SIX
	DIVISION OF LINCOLN
	LOCATION – WISCASSET
	DOCKET # WIS-91-DV-123
JAMES W. VOGT	)
PLAINTIFF	)
	)
V	) ORDER ON COUNSEL
NANCY J. CHURCHILL	) FEES
DEFENDANT	)

This matter came for hearing before the Court in July, 1994 by the Court's own order. Because a Notice of Appeal had been filed by the parties prior to this Court's entering its judgment, the matter of fees in this case was specifically reserved by the Divorce Judgment until such time as the appeal had been decided. Subsequent caselaw from the Maine Supreme Judicial Court, however, has made it clear to this Court that all issues of the case, including fees, must be resolved prior to transmitting the case to the appellate court, so this Court set the matter for pretrial conference and hearing.

There are two generalized issues concerning fees the Court must deal with in this case before issuing its order: The first has to do with the specific distribution of fees between the parties in a protection from abuse case as distinguished from a divorce case itself; and the second

issue has to do with the reasonableness of the fees themselves. The Court will address the second issue first.

Except in limited cases, this Court has no authority to award attorneys fees in the absence of either a statute or specific contractual provision. **Any** portion of an application for attorney's fee not attributable directly to the attorney's efforts litigating the claim based upon the statute which provides for fees should be excluded from the courts award. Beaulieu **v** Dorsey, 562 **A** 2nd 678 (Me.1989). The Beaulieu limitation on court awarded attorneys fees can arguably be extended to preclude an award of fees generated by any type of pre-trial and trial maneuvering which-is not directly related to a claim under a statute providing for fees. In other words, if an attorney engages in unnecessary "fee padding" actions which do not significantly contribute to the successful prosecution of the claim, such actions arguably fall outside the scope of the statutory fee recovery provisions, and therefore should not be included in the courts award. What is true in an Unfair Trade Practices Act case must certainly be true also in a domestic relations case. A New York domestic relations case appears to support this position in Ernest v Ernest 407 N.Y.S. 2nd 294 (NY App. Div. 1978) the Court held that services "unrelated" to a divorce action are not recoverable under a statute providing for an award of attorneys fees in a divorce proceeding. This is consistent with caselaw in other states, such as Guthrie vs Guthrie, 357 So. 2nd 247 (Fla. 1978). The Court has examined the fee affidavits and billing documents in this case and has noted a significant amount of time relating to complaintis that seemingly have nothing to do with the divorce, such as pleadings and correspondence to professional licensing boards, executive agencies and the like. This case has taken on a bizzare and tortuous life of its own, including complaints against almost, if not every person involved in it. These complaints have been filed in federal and state courts, executive agencies, law enforcement agencies, licensing boards, even the Humane Society. Noone has been immune. The Court finds that all of this seemingly irrelevant representation on the part of Defendant's

counsel in fact does arise directly from this divorce, and is a part of it.

There is very little caselaw in this state dealing with the issue of fees. The key factors in analyzing a petition for the payment of fees, however, seem to come from standards originally set forth in Johnson v Georgia Highway Express, Inc. 488 F 2nd 714, 717-19 (5th Cir. 1974). Poussard v Commercial Credit Plan, 749 A 2nd 881 (Me 1984); Weinberger v Great Northern Nekoosa Corp, 925 F 2nd 518 (Ist Cir. 1991). These factors are: 1) the time and labor required; 2) the novelty and difficulty of the questions; 3) the skill required to perform the legal service properly; 4) the preclusion of other employment by the attorney due to the acceptance of the case; 5) the customary fee; 6) whether the fee is fixed or contingent; 7) the time limitations imposed by the client or other circumstances; 8) 'the amount involved and results obtained; 9) the experience, reputation and ability of the attorneys; 10) the desirability of the case; 11) the nature and length of the professional relationship with the client; 12) awards in similar cases. While these factors have come under considerable criticism, Linday Brothers Builders v American Radiator and Standard Sanitary Corp., 540 F. 2nd 102 (3rd Cir. 1976); Stanford Daily, Inc. vs Zurcher, 64 F.R.D. 680 (N.D. Cal. 1974), "Court Awarded Attorneys Fees: What Is'Reasonable'?", 126 U. Pa. L. Rev.- 281 (1977),these factors, at times redundant, are fairly broad ranging and inclusive and will be adopted by the Court as the basis for review, in addition to the statutory standards set forth in 19 **M.R.S.A.** 766(l)(i) and 19 **M.R.S.A.** Sec. 722(3) as interpreted in Most v Most 477 **A** 2nd 2@50 (Me 1984).

The first Johnson factor deals with time and labor required. The Court should conduct what amounts to an independent review of the hours claimed. Johnson v Georgia Highway Express, Inc., supra; Weinberger v Great Northern Nekoosa Corp, supra. Any unnecessary duplication of hours should be subtracted if more than one attorney is involved. Johnson, supra. see also Hensley v Eckerhart, 461 U.S. 424 (1983). The Court

notes that two other attorneys from Defendant's lead counsel were involved in the case, one only minutely, and one being a significant presence at trial. While both of Defendant's counsel are outstanding members of the bar, both of their presence was not required for this trial, so the Court will disallow the hours of all lawyers in the case except Ms. Scheffee. This amounts to a reduction of the divorce case bill by 73.8 hours at $135, or $9963.

Legal and non-legal work should be separated; non legal work commanding a lesser rate. "The dollar value of [such non legal work] is not enhanced just because a lawyer does it" Johnson, supra, at 717. Travel time cannot be justified at the standard rate: all of Defense Counsel's travel time will be allowed at $55 per hour vice her billing rate of $110. While travel time as such is not specifically denoted, the Court estimates that one round trip to Wiscasset from Portland for the protection from abuse case and ten for the motion pending, pretrial conference, hearing, motion to withdraw by the guardian, and three post judgment motions, all at two hours each, require the reduction of the fee award in the protection from abuse case by $55 and the award in the divorce case by $550.

Unnecessary time spent on a case is properly subtracted from a courts award of fees. Johnson., supra, Hensley, supra. The Courts determination of what is necessary and unnecessary should be based on the trial judges "knowledge, experience and expertise of the time required to complete similar activities" Johnson, supra, at 717. Cases in the domestic relations arena indicate that a fee award should not include compensation for time spent on unnecessary research, Davis v Taylor 344 S.E. 2nd 19 (N.C. Ct App-1986), superfluous court appearances, Gasperini v Gasperini 373 N.E. 576 (ill 1978) or questionable strategy sessions, Guthrie v Guthrie, 357 So. 2nd 247 (Fl. 1978). In Davis v Taylor, the Court noted that, particularly in domestic relations litigation, there is a temptation for attorneys to "pad" hours anticipating full compensation by the opposing party. The Court stated that such an expectation "presented great danger that 'billing judgment' would

suffer; there is less incentive to exclude unnecessary or unreasonable hours when the adversary, as opposed to the client, would foot the bill" id, at 26. Another problematic feature of court awarded attorneys fees in domestic relations cases is that domestic relations clients often use more of the litigation process, and therefore the attorneys' time, than is warranted by the factual or legal issues presented in a case. Sharp v Sharp 491 SW 2nd 639 (Ky 1973). An Ohio case catalogs 263 telephone conferences and 37 office conferences between counsel and party. Swanson v Swanson 355 N.E. 2nd 894 (Oh 1976) The court noted that, "although the facts of a case may have made many consultations necessary, there comes a time when counsel is obliged to limit such conference or accept the fact that he cannot always expect full remuneration for the time so consumed." Id at 900 (quoting Dewitt v Dewitt, 191 N.W. 2nd 177 (S.D. 1971)). There is no question that this is a factor in the instant case. Because the Court has decided ultimately to award fees to the Defendant, it is not necessary to analyze Plaintiff's counsel's bills in this regard. The Court finds that the tremendous burden of unnecessary work in this case was created by the Plaintiff. Examination of defense counsel's bill show no work of the sort described in this factor that was not as a direct result of Plaintiff's maneuvering. Reluctantly the Court finds that, in this case, the defense of defendant required this work.

The next factor set forth in Johnson is whether any of the issues presented in a case are difficult or ones of first impression. None of the issues presented in this case are of first impression, nor are they anything other than routine. While this case was unusually highly emotionally charged, the basic facts of the case and the legal issues involved here were quite routine. This factor does not become relevant in analyzing the fees in this case. No legal research time will be allowed.

The next factor set forth in Johnson is the skill required to perform the legal service properly. This factor requires the court to engage in a performance evaluation of the applicants service to his client: "the trial judge should

closely observe the attorneys work product, his preparation and general ability before the court." In determining what constitutes a proper performance of the legal service, " the trial judges expertise gained from past experience of a lawyer and his observation from the bench of lawyers at work become highly important in this consideration." Johnson, supra. Presumably, poor performance is grounds for reducing either the hourly rate or the hours claimed. The aspect of quality which is a component of the reasonable hourly rate of compensation set forth below, however, should not be utilized to augment or diminish the basic award. See Linday Brothers Builders, supra. The Chief Judge for the District of Maine said this best when he cited the phrase" even Michaelangelo does not get Sistine Chapelrates for painting a barn." Weinberger, supra. The lawyers in this case were doing what they usually do. While the Court has a serious disagreement with the' fees in this case, it does not have a disagreement with the way that the lawyers did their trial work. Defense counsel earned her top dollar.

The next factor set forth in Johnson is the factor of the experience, reputation, and ability of the attorneys involved. This factor would appear to overlap the customary fee factor, requiring the court to determine whether the fee requested is in proportion to the applicants skill, experience and reputation. "Longevity per say, however, should not dictate the higher fee. If a young attorney demonstrates skill and ability, she should not be penalized for only recently admitted to the bar." The court in this case finds that these two attorneys are experienced domestic relations trial lawyers, both of whom would command fees in the higher range of fees in the Lincoln County area.

The next factor set forth in Johnson is the customary fee, meaning hourly rate. The fee set forth by the Court should be calculated based upon "the customary fee for similar work in the community". Johnson, supra. Generally, the "customary fee" is the "prevailing market rate in the relevant legal community for similar services by lawyers of reasonably comparable skills, experience

and reputation ... the applicant bears the burden of presenting satisfactory evidence that the requested rate is in line with the prevailing market rates." Norman v Housing Authority of the City of Montgomery, 836 F 2nd 1292 (Ilth Cir. 1988). The Court finds that lawyers of equal experience, skill and reputation in the Lincoln County area are paid $125 per hour. As defense counsel has entered into an agreement with her client for a lesser amount, the Court will accept that lower amount.

The next factor set forth in Johnson is the awards for fees in similar cases, meaning the size of the fees in total, as weighed against the relative stake in the case. In analyzing this factor, the court should consider other awards "made in similar litigation within and without the court's circuit." Johnson at 719. It is this particular factor that first drew the attention of the court as a problem in this case. The court has seldom seen fees as high as they are in this case and has never seen ones in a case in such transparent simplicity. This factor weighs heavily on the courts mind in the evaluation of the ultimate award. The Court finds that given the issues in this case, the case should have settled, with fees in the range of five thousand dollars. Even tried as it was, the fees in this case should not have exceeded ten to fifteen thousand dollars. That the fees were as high as they were in this case is a monument to the scorched earth, multi-arena litigative techniqu6 employed by the Plaintiff.

The next factor set forth in Johnson is the preclusion of other employment by the attorney due to the acceptance of this case. This court has had the pleasure of dealing with both of these lawyers on other matters both within the Division of Lincoln and other divisions in this District on sufficiently frequent occasions during the pendency of this case to know that their practices have not ground to a halt as a result of their involvement here. For that reason, this factor is not a relevant one in the analysis of these fees.

The next three factors set forth in Johnson are: 6) whether the fee is fixed or contingent; 7) time limitations imposed by the client or the circumstances; and 10) the

undesirability of the case. The fixed or contingent fee aspect as compared to an appropriate hourly rate is not applicable to the case. There were no limitations imposed by the client or the circumstances requiring that undo amount of "overtime". The undesirability factor deals primarily with civil rights cases and the reward for the acceptance of employment that would put the lawyer in social and economic jeopardy. While none of these other factors are relevant to the instant case, the undesirability factor does come into play somewhat. Defense counsel's affidavit of 20 June 1994 outlines with painful clarity the personal abuse to which she has been subjected in this case. The Court can do nothing else for her and her client than the ultimate result of todays Order.

The next factor set forth in Johnson is the amount involved and the results obtained. While the size of the monetary award is relevant to determining the size of the fee award, there are several reasons why the use of this factor is considered inappropriate in the context of the domestic relations case. First, it is illogical to order one spouse to pay for the beneficial result obtained by the other. Darden v Witham, 209 SE 2nd 42 (S.C. 1974)(Brailsford, dissenting). Secondly, as a Florida Court has commented, "to exact fee money in an amount determined in such major part by the [parties] financial gain from the divorce judgment does not serve the policy on which such awards are justified. Rather it implies that [the party] was 'the big winner' of a financial contest and penalizes [the other party] for being 'the big loser'. We do not consider that to have been the purpose of awarding fee money in divorcelitigation, and it certainly is not the purpose in todays proceedings. Valpariso Bank & Trust Company v Sims 343 So. 2nd 967 at 972 (Fla. 1977).

While the size of marital estate should never be used as a reason to increase the size of the fee award, it could quite logically be used as a factor to diminish the fee award, because in a domestic relations case the fee award does not come from some source other than the marital estate, but necessarily comes from within the marital estate, hence diminishing it. If we were to exclude this factor, we

might frequently end up with the absurd, Dickensian result of the marital estate being eaten up in its entirety by attorneys fees. Lawyers and presiding judges must necessarily keep the ultimate stake of the controversy in mind in determining the scope and breadth of litigation. Lawyers who fail to do that do so at risk of a significantly reduced fee. The factor is clearly implicit in the Most case, supra, which teaches us that "reasonable" attorneys fees may be allocated between the parties on the basis of their "relative capacity to absorb the cost of litigation" Most v Most 477 A 2nd at 263. The Court today has chosen to disregard Plaintiff's attorney's fees because of the considerations of fault set forth below. To the extent that today's decision diminishes Plaintiff's portion of the marital estate, it is sad, and unfortunate, but it is his own handiwork. Defense counsel's affidavit of 20 June 1994 shows that better offers were made to him early in the case, yet he refused them. He did so at his peril.

The last factor set forth in Johnson is the nature and length of the professional relationship of the client. A lawyer in private practice may legitimately vary his fee of similar work in light of the long-term relationship between the client and the office. No evidence to the contrary being presented by Plaintiff, it is the assumption that he would pay at counsels' higher rate. Defense counsel has set a lower rate for her client, so both parties gain the benefit of that bargain.

While not outlined in the Johnson case, two other issues have been presented: first whether the fees for services rendered by paralegals can be included in an award of reasonable counsel fees. In First New Hampshire Banks Granite State vs Scarborough, 615 A 2nd 248 (Me 1992) the Law Court indicated that paralegal fees which are "fair and reasonable charges for the legal services rendered" may be included in the fee award. Id at 251. Defense counsel's affidavit outlines 37.2 hours at $65 dollars per hour. The Court finds that both the amount of time and the hourly rate are reasonable, and allow them.

Secondly, the issue has been raised whether computerized legal research services expenses may be properly included in a court's fee award. While there is no Main?-- case law on point, the Federal Circuits are split. Federal District Court for the District of Maine has excluded computerized research expenses from its fee awards on the theory that this is overhead and that the client is paying for the time of the lawyer utilizing the research computer facility. Auburn Police Union v Tierney, 762 F.Supp.3 (D.Me 1991); Weinberger, supra. Cf In Re: Continental Illinois Securities Litigation, 962 F.2nd 566 (7th Cir. 1992) This court is going to adopt the position of the District of Maine. Defense counsel's request for $791 in "Lexus" time is not allowed.

The next major issue to be dealt with are the rules concerning allocation of fees between the parties. With regard to any and all fees generated by the Protection from Abuse case, the answer is clear. 19 M.R.S.A. Sec. 766 (i) states, amongst the other relief available to be granted in a protection from abuse case, the Court may "Order ... the defendant or, if the complaint is dismissed, the plaintiff, to pay court costs or reasonable attorneys fees". The section does not require the court to order fees but leaves it discretionary. This language, taken with the intendment of the legislature in enacting this Protection From Abuse Chapter, however, makes it clear that the factors for allocating the fees are completely different than those allocated in the divorce chapter under 19 M.R.S.A. Sec. 722 (3). While the abilities of the parties to pay and their capacity to absorb the costs of litigation can and should be considered, another, and considerable, factor would be the concept of "fault" as the term has meaning in its traditional sense. Given that factor, and the other factors cited above, the court is going to order the defendant to pay all of plaintiffs reasonable attorneys fees directly related to the protection from abuse case. The Court finds that this amount is $1283.

The next issue before the court is whether or not, in its allocation of fees in the divorce case, the court can look at factors other than the relative capacity of the parties to

absorb the costs of litigation outlined in Most. Given the pending sale of the real estate in this case, they both have the capacity to absorb the expense of this litigation. This question has been settled somewhat in Gray vs Gray 609 A.2nd 694 (Me.1992) in which the Law Court indicated that, in addition to the relative financial ability of the parties, the conduct of the parties in the course of the litigation should be considered in determining the allocation of fees. The Law Court found that the husbands "conduct during the litigation, including his failure to cooperate in discovery, increased legal costs incurred by the wife." For this reason and the fact that the husband was in a superior economic position, the court held that the award of attorneys fees and costs to the wife under 19 M.R.S.A. Sec. 722 (3)was not an abuse of the trial courts discretion. It could be argued that the Court's statements concerning unnecessary conduct during litigation was nothing more than superfluous dicta that the court tacked on to an opinion as more of a reprimand than an opinion as to what the law is, or should be, in this area. According to this view, the basis of the court's allocation was the relative financial abilities to pay. This Court feels that a more reasonable interpretation of the Law Court's holding in Gray is that borderline frivolous conduct by one party which increases the legal expenses of the other party should be paid by the party whose actions created the expenses, regardless of the parties relative economic position.

This view is well supported by courts in other jurisdictions. it would appear to be well established in other states that an award of attorneys fees may be allowed against a spouse where the spouses actions have created unnecessary expenditures. In Re: Marriage of Clapperton, 649 P. 2nd 620 (Or. 1982); In Re: Marriage of Merry, 689 P. 2nd 1250 (Mont. 1984); Gardner vs Gardner, 629 P. 2nd 1283 (Okla. 1991); Kruger vs Kruger 679 P. 2nd 961 (Wash. 1984); Hammonds v Hammonds, 583 S.W.2nd 807 (Tex. 1979); Gant v Gant, 329 SE 2nd 106 (W.Va. 1985); Senger vs Senger 308 N.W. 2nd 395 (S.D. 1981). In the Gardner case, the Oklahoma Court stated that the trial court had discretion in a divorce proceedings to allocate fees

attributable to "arbitrary and capricious conduct" by one spouse which "increased the overall costs of litigation" to the "offending party" 629 P. 2nd at 1286. Similarly, in the Kruger case, the Washington Court indicated that the trial court had not abused the discretion in awarding attorneys fees of one of the parties to the other party where the fees "were required because of the intransigence" of the other parties. 679 P.2nd at 963. In Gant, the Supreme Court of West Virginia held that the allocation of attorneys fees to the appellant was not an abuse of the trial courts discretion where "most of the litigation in the case was a direct result of the appellants own litigious behavior and his willful resistance to court orders." 329 S.E.2nd at 118. Court made law in this area is consistent with recent trends among state legislatures to require a party engaging in unnecessary conduct to pay that portion of the parties fees which are attributable to that conduct.. In California, the legislature of that state enacted a provision in the state's divorce statute directing the trial court in awarding the attorneys fees to take into consideration "the extent to which the conduct of each party and the attorney furthers and frustrates the policy of the law to promote settlement of litigation and, where possible, to reduce the costs of litigation by encouraging cooperation between the parties and attorneys." Responding to the statute, one California court has stated "in enacting the statute the legislature for the first time acknowledged that reprehensible conduct short of bad faith was a pertinent factor in a courts determination of a proper attorneys fee award." in re: Marriage of Malone, 238 Cal. Rptr. 510, 515 (1987). This Court adopts the position that, in addition to the factors set forth in Most, the trial court, in allocating attorneys fees between the parties may look to a factor which, for the want of a better word, it will call "fault". This "fault" is not to be confused with the term of art used as a grounds for divorce, but rather to the conduct of one or other of the parties during the course of litigation which, while not rising to the level of bad faith, either creates unnecessary delay and confusion or was arbitrary and capricious, or which act was so out of line with regard to the legal or practical benefits to be

obtained from it that its net effect can be said to be fruitless.

If ever there were a case for finding this conduct, Plaintiff's behavior in this case is it. The Court has found elsewhere in its many decisions the facts sufficient to support this finding. The painful litany will not be repeated here. There can be no fair result other than that he must bear all of the burden of this absurdly expensive litigation, both his own and the Defendant's. This result also eliminates the necessity of examining the Plaintiff's counsel's bills in detail. The burden of proof is upon every proponent. Details of billing must be clear. Weinberger, supra. Plaintiff's counsel's bill were undetailed, general, and generously rounded. Careful analysis would have been difficult, if not impossible.

Based upon the foregoing considerations, the Court finds that a reasonable fee for the prosecution of the protection from abuse case to be $1283. in addition, the Court finds that a reasonable fee for the defense of this divorce case, as it was needed to be defended, was $17,112. Because it is not ordering any fees to be paid by Defendant, analysis of Plaintiff's counsel's bill will left for another date and another forum. It is therefore ORDERED that Plaintiff pay to Elizabeth J. Scheffee, Esq. and the Law Firm of Givertz, Lunt, Hambly and Scheffee $1283 as and for attorneys 'fees for the prosecution of the protection from abuse case. and $17,112 as and for fees for the defense of the divorce case, to be paid from the proceeds of the sale of the marital home when it is sold in accordance with this Court's previous Judgment.

DOCKET ENTRY

The Clerk shall enter the following entry in the docket: Plaintiff to Elizabeth J. Scheffee, Esq. and the Firm of Givertz, Lunt, Hambly and Scheffee the amount of $1283 in WIS-91-PA-4-3 and $17,112 in -WIS-91-DV-123 as and for fees for the prosecution of the protection from abuse case and defense of the divorce. The Order of Counsel Fees dated 4 December 1994 is incorporated in the docket by reference. This

entry is made in accordance with M.R.Civ.P. 79(a) at the specific direction of the Court.

Dated 4 December, 1994
/s#Joseph Field
Joseph H. Field
Judge, Maine District Court

ORDER UPON REFERENCE

The court sponsored theft of the marital home which no court nor law enforcement agency in Maine will deal with. Appealed when Attorney was found to have lied about powers of referee.

STATE OF MAINE Lincoln, ss.	DISTRICT COURT DISTRICT SIX DIVISION OF LINCOLN LOCATION – WISCASSET DOCKET # WIS-91-DV-123
JAMES W. VOGT PLAINTIFF	)
V NANCY J. CHURCHILL DEFENDANT	) ORDER UPON) REFERENCE

Plaintiff Filed a Motion to Amend 31 May 1994. This matter was referred to a referee pursuant to the provisions of Rule 53, Maine Rules of Civil Procedure by Order of this Court dated 5 July 1994. The Court has received the report of the referee, and notice of filing sent to the parties. No objection being heard, it is therefore ORDERED that the report of Dana A. Cleaves, Esq. dated 9 September 1994, is adopted in whole, and incorporated

in this judgment as if fully set forth herein, with the exception of the referee's proposed child support and immediate withholding orders. With regard to these, the Court adopts the findings and proposals, but issues the orders separately today over the signature of a Judge of the Maine District Court in order to comply with current child support statutes and procedure.

Dated 6 October, 1994
/s#Joseph Field
Joseph H. Field
Judge, Maine District Court

ORDER PENDING DIVORCE

Appeal not dealt with at any level because a judge and officer of the Maine Bar Association facilitated the theft.

STATE OF MAINE	DISTRICT COURT
Lincoln, ss.	DISTRICT SIX
	DIVISION OF LINCOLN
	LOCATION – WISCASSET
	DOCKET # WIS-91-DV-123
JAMES W. VOGT	)
PLAINTIFF	)
	)
V	) ORDER PENDING
NANCY J. CHURCHILL	) DIVORCE
DEFENDANT	)

Paragraphs 1-6 omitted as not relative to appeal

The parties have also settled certain marital property issues. As a result:
IT IS FURTHER ORDERED THAT:

1. the defendant shall pay to the Plaintiff the sum of Forty-Eight-Thousand-Eight-Hundred-and-Four dollars and no cents (48,804.00). This sum represents the amount payable under the Judgment of Divorce after subtracting the amount the Plaintiff was to pay on the home equity loan in the sum of Six-Thousand-Nine-Hundred-and Forty-One dollars and no cents, One-thousand-and-six hundred dollars and no cents.

2. Defendant shall upon the signing of this order immediately and expeditiously refinance the existing home equity loan and using the house as collateral, borrow sufficient sums to pay this debt.

3. At the closing of the loan:

A. A certified check in the sum of receipt of the Forty—Eight-Thousand-Eight-Hundred-and –Four dollars and no cents shall be delivered to the Plaintiff.

B. Plaintiff shall execute and deliver a quit-claim deed with covenant to the Defendant transferring all of his right title and interest in the marital residence to the defendant and setting the property aside to Nancy J. Churchill as her sole and exclusive property, to wit:

Real Estate located at Dresden, Maine, more particularly described in the deed from Nancy J. Churchill to nancy J. Churchill and James Vogt recorded in the Lincoln County Registry of Deeds in Book 1688, page 146.

Therefore, the marital residence shall not be sold as ordered in the divorce judgement.

4. Upon receipt of the forty-eight-thousand-eight-hundred and for dollars and no cents, Plaintiff shall deliver to the Defendant all of the documents, records and

calculations in his possession relating to the house, including but not limited to the money and time spent on the purchase and construction of the marital residence.

5. Each party shall be responsible for the payment of his or her tax liability associated with the transfer or sale of the marital residence and shall hold the other harmless with respect to that liability.

6. This judgment by agreement is in full settlement of the rights that each party had in the marital property.

7. In all other respects the parties agree to the property division set forth in the divorce judgment.

8. The parties waive their appeal rights with regards to the marital property issues.

9. Finally, the parties have agreed that the judgment of divorce shall be final insofar as it grants a divorce to the parties.

Dated 29 September, 1994
/s#Dana A Cleaves
Referee

ORDER ON DEFENDANT'S REQUEST FOR INJUNCTIVE RELIEF

The "Spicker order" used to protect corrupt judges and lawyers.

STATE OF MAINE	DISTRICT COURT
Lincoln, ss.	DISTRICT SIX
	DIVISION OF LINCOLN
	LOCATION – WISCASSET
	DOCKET # WIS-91-DV-123
JAMES W. VOGT	)
PLAINTIFF	)
	)
V	) ORDER PENDING
NANCY J. CHURCHILL	) DIVORCE
DEFENDANT	)

Defendant's Motion for Permanent Injunction dated April 11, 1995 is GRANTED. The Court further FINDS, ORDERS, and DECREES:

I . Since the entry of Divorce Judgment in this matter on August 11, 1993, Plaintiff has engaged in a course of conduct which this Court has noted in its previous judgments, and which Defendant brought to the Court's attention in specific detail in her pleadings and at the November 14, 1995 hearing of this matter, to wit:

a. Plaintiff has instituted numerous lawsuits and/or grievances against attorneys, witnesses, judges, and professionals -connected with this divorce proceeding.

b. Plaintiff reported the following individuals to their respective licensing boards: Defendant's counsel (Elizabeth Scheffee); Plaintiff's previous attorney (Nicholas Walsh); the Guardian ad Litem for the parties' children, Lynda Doyle; one of Defendant's expert witnesses, Mary-Gay Kennedy; Mr. Geoff Rushlau; Defendant's therapist; Leanne Robbins; Judge Michael Wescott; Judge Joseph H. Field; and Stephen C. Lunt.

C. Plaintiff has filed numerous adverse reports about Defendant with the Internal Revenue Service and the New York State Department of Taxation, and the Maine Bureau of Taxation, alleging tax fraud, to the Maine Department of Human Services alleging child abuse, and with various Maine newspapers, alleging child neglect, child abuse, and tax fraud.

d. On October 26, 1994., Plaintiff filed an action for civil rights violations in Lincoln County Superior Court against the Honorable Joseph Field (Docket No. CV-94-95), which action was dismissed.

e. On November 3, 1994, Plaintiff filed an action in Federal District Court, Docket No. 94-335-P-H, against Defendant, Defendant's counsel, the Honorable Joseph Field, Joseph Molnar, Geoff Rushlau, Lynda Doyle, and Michael Carpenter. The action against all Defendants was subsequently dismissed; Plaintiff filed an interlocutory appeal, which was also dismissed. Plaintiff then filed an appeal of the dismissal to the First Circuit Court of Appeals of the united States.

f. On November 23, 1994, Plaintiff filed an action for slander and libel against Defendant and Defendant's attorney, Lincoln County Superior Court, Docket No. CV-94-104, which action is pending.

g- On March 28, 1995, Plaintiff filed a second action in Federal District Court for civil rights violations against the same Defendants' named in his November 3, 1994 complaint, Docket No. 95-103-P-H.

h. Thus, several of the individuals involved in this case have been sued three and, in two instances,

four times by Plaintiff, in addition to responding to the professional grievances Plaintiff instituted against them.

i. in addition, Plaintiff has complained about some or all of the previously named individuals with the Attorney General's office, with the Maine Civil Liberties Union, the Maine State Legislature, the Chief Justice of the Maine Supreme Court, and the United States Attorney General.

2. The Court finds Plaintiff filed the complaints, grievances, and petitions to interpose confusion and delay.

3. This Court has authority under Spickler v. Key Bank, 618 A.2d 204 (1992), to issue injunctive relief based on these circumstances.

Therefore:

1. Plaintiff is ENJOINED and PROHIBITED from filing any complaints, pleadings, or petitions against any individual involved in this litigation including, but not limited to, parties, agents, attorneys, court officers, employers, and witnesses in any court located in this state unless the document is countersigned by an attorney licensed to practice in this state, approved by the judge presiding in the court where the document is filed or a presiding judge of the sixth district court. This injunction does not preclude Plaintiff from filing appellate briefs in his pending appeals in state and federal courts, and nor does it preclude motions Plaintiff files in the prosecution or defense of actions currently pending in state court.

However, should Plaintiff file a motion in the prosecution or defense of currently pending litigation, it must be supported specifically by the applicable rules of civil procedure, statutory citation, and/or case law. In addition, Plaintiff must first obtain the approval of any judge of the Court where the motion is being filed and

provide Defendant a copy of the authorization before a response is required or a hearing on the motion is held.

2. Plaintiff is further ENJOINED and PROHIBITED from filing any further grievance or complaint against any professional involved in this litigation with an agency which regulates that individual's professional conduct without first obtaining the written, advance approval of either a judge of the Sixth District Court or the chair of the subject licensing board.

The clerk shall enter the forgoing order on Defendant's request for injunctive relief on the docket by a notation incorporating it by reference pursuant to M.R.C.P 79(a).

Dated 5 February, 1996
/s#Joseph Field
Joseph H. Field
Judge, Maine District Court

REFUSAL TO GRANT PERMISSION UNDER THE SPICKLER ORDER

One example of how Maine Judges used the spickler order to protect the corrupt among them

Letter, March 22nd, 1999
Clerk, Lincoln County Superior Court
PO BOX 249
Wiscasset, ME 04578

RE: CV-94-110-111, Permission to file under the spickler order

Dear Clerk:

I request permission to file a complaint of grand theft with the Lincoln County District Attorney and the US Attorney General regarding the theft of my interest in the marital home.

I have attached copies of the deed transfers associated with this theft.

Failure to grant this permission would constitute a willful violation of my State and Federal rights to seek redress, equal protection of the law, free speech and, certainly, given you would never allow a male to steal the property of a female, discrimination based on sex. Furthermore, such a denial, given I believe at least one officer of the court is culpable in this theft, a violation of my civil rights under color of law and conspiracy to violate those rights would also apply.

Thank You
/s#James W. Vogt
41 Swetts Bridge Road
Alfred, ME 04002

Permission is granted for James W. Vogt to file complaints with the Lincoln County District Attorney and US Attorney General regarding the questionable transfer of property described above and demonstrated by the documents attached.

_____ Justice, Superior Court

Dated: _____

Written in pen on this letter, received by the Clerk on Mar 22, was the following denial:

'3/31/99. Since this "request" is not in conformance with any recognized judicial process and the "Spickler Order" so-called sets forth specific procedures for seeking to file matters against individuals etc., in the courts and with certain agencies, the clerk is directed to place the document in file with no further action. it is recommended that the applicant seek advice of counsel.
3/31/99
/s#Stephen L. Perkins
Active-Retired Justice, Superior Court

REFUSAL TO GRANT PERMISSION UNDER THE SPICKLER ORDER

Ambiguity of Order

Denial of Permission (After fraudulent deed transfer)

State of Maine
Lincoln County
Superior Court
No docket, no case reference

James W. Vogt
v
Nancy Churchill

This cause came before the court upon the request of James W. Vogt for permission to file a complaint as attached hereto pertaining to the fraudulent transfer of real estate, and it appearing that the complaint is neither signed by the complainant nor "countersigned by an attorney licensed to practice in this state" pursuant to the order of

court dated February 5, 1996 IT IS ORDERED that the clerk of courts is directed to reject this complaint for filing in the superior court for Lincoln county for the reasons stated above. Permission to file complaint is denied.

June 17, 1996
/s#Stephen L. Perkins
Active-Retired Justice, Superior Court

Letter to Perkins, RE denial
June 19th 1996
Dear Justice Perkins:

I was somewhat surprised at two comments you made in court on June 18th. The firs, that the injunction required me to have an attorney sign off on any complaint. The second, that you had dealt with something relating to me and that I had not followed the order.

When I returned home from that hearing your denial of my request ot file a complaint was in my mail. You stated the reasons you denied were that I did not sign the complaint and that I did not have it countersigned by an attorney. I wish to respond as follows:

1. I did not sign the complaint because I submitted it for approval, not for submission. In the past, this is the manner in which Judge Field has proceeded. I expect approval or denial. Upon approval, I would have sent it on to the clerk with your approval. I am sorry for any inconvenience this may have caused.

2. As I read the order and the transcript of the hearing at which Judge Field dictated the injunction, neither required the signature of an attorney. Judge Field made the requirement for an attorney OR by the judge in the presiding court OR a presiding judge of the sixth district court. The requirement for an attorney was not in addition

to or a stand alone requirement. I believe that if it were, Judge Field's order would simply have placed myself (and anyone else without funds) in a position of being excluded from obtaining relief from the courts. I believe, given I cannot afford an attorney (which is why I do these myself) that such a provision would be another violation of Constitutional guarantees (unless the court appoints an attorey). I have attached a copy of the annotated order I received from Judge Field, highlighted. As you can see, Judge Field "whited out" the 'or' between state and approved, and aded a comma in place of the "or", and replaced the period at the end of the sentence with a comma and added the statement "or presiding judge of the sixth district court".

I ask that you review this provision of Field's order. Should you not agree that it reads as I have intrepreted I will as Judge Field to clarify. Shoud you agree that the only the approval of a Superior Court Justice of District Court Judge is sufficient, kindly review the complaint and either allow or deny (giving me your rationale for denial).

6/19/1996
/s#James W. Vogt

Order, Request for Reconsideration
State of Maine
Lincoln County
Superior Court
No docket, no case reference

James W. Vogt
v

Nancy Churchill

This matter came before the court on a request of James W. Vogt to reconsider the order of this court dated June 17th, 1996, seeking authority of the Superior Court to permit him to file a complaint in accourdance with procedures set forth by Judge Field of the Maine District Court in his order of February 5, 1996.

While the order of Judge Field is somewhat ambiguous, this court upon further review accepts the interpretation given by the complainant as reasonable alternative methods that may be utilized by him to file a complaint with the court in certain specific instances.

Nevertheless, the court does believe and so finds that the signature of the complainant is required on the initial filing with the court seeking approval of the filing if the complaint does not carry the signature of an attorney. In this case, it did not.

Therefore, the ruling of June 17th, 1996 denying acceptance of the complaint for filing is affirmed.
August 21, 1996
/s#Stephen L. Perkins
Active-Retired Justice, Superior Court

Denial of right to appeal – After theft

State of Maine
Lincoln County
Superior Court
No docket, no case reference

This cause came before the court on the request of James W. Vogt to appeal the Order of Justice Perkins dated August 21, 1996 (denial of permission to file complaint). It is ordered that request to appeal order of Justice Perkins is DENIED
September 30th, 1996
/s#Robert E. Crowley
Justice, Superior Court

DENIALS UNDER SPICKLER BY FIELD

Letter dated April 22nd, 1996
Vogt to Field
Permissions required per your injunction

Kindly give me permission to file the following papers in the courts designated:

1. Writ, USSC, dismissal of Scheffee, etc.
Written in pen beside this item by Judge Field: "Granted".

3. Briefs to Superior Court for Appeal of Divorce. Written in pen beside this item by Judge Field: "Already Granted".

4. Complaint, Superior Court, Committee on Judicial Responsibility refusing to provide information under freedom of access laws. Written in pen beside this item by Judge Field: "Denied".

5. Complaint to DHS regarding endless false statements by Churchill. Written in pen beside this item by Judge Field: "Denied".

DECISION AND ORDER, SUPERIOR CT

STATE OF MAINE	SUPERIOR COURT
Lincoln, ss.	CIVIL ACTION
	DIVISION OF LINCOLN
	DOCKET CV-94-110
	CV-94-111 CONSOL
JAMES W. VOGT)	
PLAINTIFF/APPELLANT)	
)	
V)	DECISION AND
NANCY J. CHURCHILL)	ORDER
DEFENDANT/)	
APPELLANT)	

This matter is before this Court on Mr. Vogt's consolidated appeals pursuant to M.R. Civ. P. 76D. For the following reasons, Mr. Vogt's appeals are denied.

FACTS

The parties were married on February 15, 1988 in Perth, Australia. They have two minor children, Robin and Zoe, twins born on September 14, 1989. Mr. Vogt filed for divorce on August 29, 1991. On October 25, 1991 Judge Westcott issued an ~ /."-N ~ order pending divorce. The divorce judgment was issued by Judge Field on August 13,1993. Mr. Vogt filed a notice of appeal of this judgment on August 20,1993.

DISCUSSION

Standard of Review Issues arising out of a divorce action, such as property division, alimony, custody and child

support, are within the court's sound discretion, and the judgment of the court on such matters is entitled to substantial deference. As long as there is rational or credible evidence in the record supporting the divorce court's decision, the judgment will not be overturned on appeal. Knight v. Knight, 680 A-2d 1035, 1037 (Me. 1996) (citations omitted). The factual findings of the trial court will not be set aside unless they are clearly erroneous and due regard shall be given to the opportunity of the trial court to judge the credibility of the witnesses. M.R. Civ. P. 52(a); Harmon v. Emerson, 425 A.2d 978, 981 (Me. 1981). Under the clearly erroneous test, "a lower court's findings of fact will stand unless they clearly cannot be correct because there is no competent evidence to support them." original). Lewisohn v. State, 433 A.2d 351, 354 (Me. 1981) (emphasis in Parental Rights and Resi2onsibilities and Primary Residence "The lanv of this state recognizes that in making custody determinations, the trial judge who is asked to act as a wise, affectionate, and careful parent to.do what is best for the interest of the child must be held to be invested with a broad discretion." Harmon, 425 A.2d at 983. The standard of review is whether the trial judge's decision was so erroneous as to constitute an abuse of discretion. Id. The trial court awarded sole parental rights and responsibilities and primary residence of the children to Ms: Churchill. Because there is rational and credible evidence in the record supporting this decision, Mr. Vogt's appeal on this ground must be denied. Child Sul2port "[There is a rebuttable presumption that the parental support obligation derived from the support guidelines is the amount ordered to be paid." 19-A M.R.S.A. § 2005 (1998). This presumption can be overcome if it is shown that a child support order based solely on the support guidelines would be "inequitable or unjust" due to one or more of the

considerations listed in 19-A M.R.S.A. § 2007(3). The trial court order Mr. Vogt to pay $168 per week towards the support of the children based upon support guidelines. Mr. Vogt has failed to rebut the section 2005 -presumption or to show that the trial court's order on this issue was clearly erroneous. Therefore, his appeal on this issue must be denied.

Division of Property

The division of marital property is committed to the discretion of the trial court. Most v. Most, 477 A-2d 250, 262 (Me. 1984). "The statute directs a 'just' not an equal division of marital property." Pongonis v. Pongotzis, 606 A.2d 1055,1058 (Me. 1992). See also 19-A M.R.S.A. § 953(l) (1998). "Absent a violation of some positive rule of law, this Court will overturn tl-te trial court's decision only if it results in a plain and unmistakable injustice, so apparent that it is instantly visible without argument." Pongotiis, 606 A.2d at 1058 (quoting Atiderson v. Aliderson, 591 A.2d 872,874 (Me. 1991)). In making the property division in the instant case, the trial court decided to put each party back to the same position they were in at the time of their marriage because they were married for only a short time. It is well settled that the court can w consider the length of the marriage in determining the disposition of marital property. Eaton v. Eaton, 447 A-2d 829, 831 (Me. 1982). In considering the relative positions of the parties at the time they married, the trial court found that Ms. Churchill entered the marriage with significantly more assets than Mr. Vogt. The trial court found two marital assets, the home in Dresden and certain contributions to various retirement accounts. After considering the parties respective contributions to the real estate as well as the retirement accounts, the trial court

awarded $60,000 of the equity in the marital home to Mr. Vogt and the balance to Ms. Churchill. Considering the length of the marriage and the parties respective financial positions at the time they married, this property division did not result in a plain and unmistakable injustice so as to warrant reversal of the trial court's decision.

Attorney Fees

On the issue of attorney fees, the trial court ordered Mr. Vogt to pay Ms. Churchill's attorney $1283 for the prosecution of the protection from abuse case and $17,112 for the defense of the divorce action. In making this order, the trial court judge considered extensively the twelve factors outlined in Poussard v. Commercial Credit Plan, 479 A.2d 881, 884 (Me. 1984) as well as the Law Court's admonition in Most v. Most, 477 A.2d 250, 263 (Me. 1984) that the court "consider the parties' relative capacity to absorb the costs of litigation." The trial court also considered the conduct of the parties during the course of this litigation and found that as a result of Mr. Vogt's behavior "there can be no fair result other than that he must bear all of the burden of this absurdly expensive litigation, both his own and [Ms. Churchill's]." 12/4/94 Order p. 10. It is not an abuse of discretion for the trial court to consider the parties' behavior during the course of the litigation in making an award of attorney fees. See Rosen v. Rosen, 651 A.2d 335, 337 (Me. 1994) (holding that the trial court "has discretion to consider all factors that reasonably bear on the fairness and the justness of the award"); Gray v. Gray, 609 A.2d 694, 699 (Me. 1992) (noting that appellant's "conduct during the litigation, particularly his failure to cooperate in discovery, increased the legal costs incurred by [appellee]").

Appeal of the August 9, 1994 Protection from Abuse Order

A protective order or approved consent agreement is for a fixed period of not to exceed two years. 19-A M.R.S.A. § 4007(2) (1998). Mr. Vogt has appealed the consented to protection from abuse order that was entered into on August 9, The order expired on August 9, 1996 and Mr. Vogt's appeal of that Order became moot at that time. See Sordyl v. Sordyl, 1997 ME 87, 692 A.2d 1386. Appeal of the February 5, 1996 "Spickler" Order On February 5, 1996 the trial court granted Ms. Churchill's motion for injunctive relief and issued a "Spickler" order against Mr. Vogt. It appears from the District Court docket sheet that Mr. Vogt failed to file a timely Notice of Appeal of this order as required by M.R. Civ. P. 76D. The Superior Court may dismiss an appeal from the District Court "[i]f an appellant fails to comply with the provisions of Rules 76D through 76G within the time prescribed therein." M.R. Civ. P. 76D. However, even if Mr. Vogt had filed a timely Notice of Appeal of the "Spickler" order, the trial court's decision to enter the order would be upheld on appeal. "A court properly may enjoin a party from filing frivolous and vexatious lawsuits." Spickler v. Dtibe, 644 A.2d 465, 468 (Me. 1994). The court's issuance of the injunction is reviewed for an abuse of discretion and the factual findings underlying the exercise of that discretion for clear error. Id. at 467. The party seeking the injunction "must make a detailed showing of a pattern of abusive and frivolous litigation, and the court must not issue a more comprehensive injunction than is necessary." Id. at 468-69. These requirements were met in this case and so the trial court did not abuse its discretion in issuing the "Spickler" order against Mr. Vogt. 0 Denial of Mr. Vogt's Motions for Recusal of Judge Field "Recusal is a matter

within the broad discretion of the trial court." Estate Of Dineen, 1998 ME 268, T 8, 721 A.2d 185, 188. The denial of a motion to recuse is reviewed for an abuse of discretion. id, There is nothing in this record to indicate that the trial judge did not render his decisions and orders impartially or that his denial of the motio@,is to recuse was an abuse of discretion. See State v. Marden, 673 A.2d 1304,1308 (Me. 1996). Other Asserted Errors Mr. Vogt has raised several other claimed errors which do not require discussion other than to note that they are not meritorious.

Wherefore the entry shall be
Appellant's appeals are denied
June 2, 1999
/s#Stephen Perkins
Active-retired justice, Superior Court

DECISION – DHS HEARING OFFICER

State of Maine
Department of Human Services
Case # 200229764P
TO: James W. Vogt
Decision

This decision is rendered pursuant to 1 9 MRSA sec. 51 5 and rules promulgated thereunder.
TO: James W. Vogt
RR # 4,
95-A Swetts Bridge Road
Alfred, ME 04002

DECISION

Pursuant to your request for review of the child support obligation of James W. Vogt, a hearing was held on Thursday, October 31, 1 996, in Biddeford , Maine, before David Bussey, a hearings officer. The hearings officer's jurisdiction was conferred by special appointment from the Commissioner, Department of Human Services. The issues at the hearing were limited to the matters raised in the Affidavit or Affirmation that accompanied the request for review: No affidavit or affirmation accompanied Mr, Vogt's request for hearing. It was concluded at hearing that the single issue subject to review in this proceeding is the accuracy of an allegation set out in a Maine Department of Human Services Division of Support Enforcement and Recovery Notice of Debt, dated December 21, 1 995. 1 The Notice of Debtr health, dental, and eye care costs incurred for his children- Robin L. Churchill- Vogt (dob 9/1 4/89) and Zoe R. Churchill-Vogt (dob 9/1 4/89). Mr. Vogt argued at hearing that the amounts alleged due included amounts that were previously paid by insurance, or were from periods in which he did not have an obligation to pay any of the children's medical costs, or were for expenses incurred for his ex-wife and not for his children, or were not due from him for other reasons.

At the-close of hearing, the Department's representative requested additional time to review Mr. Vogt's evidence, with the intention that the Department would remove charges from the list of amounts alleged due, if with regard to any of the charges Mr. Vogt's evidence raised a defense that the Division of Support Enforcement and Recovery considered to be legitimate.

The Department's representative concluded after reviewing Mr. Vogt's evidence that of the $446.80

originally alleged due from him, it would continue to seek payment from him of only $235.42. Only these remaining disputed charge2 are left for resolution in the present administrative hearing decision.

Appearing at the hearing on behalf of the agency were the following people: Paul Hachey, Support Enforcement Supervisor Appearing on behalf of the responsible parent were the following people: James W. Vogt

The following items were introduced into evidence: 1. postal return receipt, and 1, 2/21/96 letter to James W. Vogt from Support Enforcement Agent Madeleine Salamonski, and 1 2/21/95 Notice of Debt 2. 8/1 1/93 Maine District Court Divorce Judgment and Conditional Order of Income Withholding 2A list of the charges that the Department's representative alleged due after 11-13-93 is set out in a November 13, 1996 letter to the Hearings Officer from the representative; Record item 3 1. November 22, 1996 (the remainder left out)
contained the allegation that although Mr. Vogt had a positive credit balance with respect to his cash child support obligation, as of the date of its issuance Mr. Vogt owed $446.80 in I James W. Vogt made a timely request for hearing after he received the Notice of Debt, but no hearing was scheduled prior to October 31, 1996. The Division took collection action against Mr. Vogt, including forwarding the case to the IRS for interception of his federal income tax refund, after his request for hearing and before the hearing was scheduled. It has withdrawn all such collection actions pending the outcome of this administrative proceeding .Medical, psychological and related records submitted by James W. Vogt (marked 'Plaintiff's Exhibit #47".to "Plaintiff's Exhibit #99") 31.1 1/1 3/96 letter to David T. Bussey from Paul Hachey

(Division of Support Enforcement and Recovery representative at hearing) Also included in the record of this hearing are the following: A. 1 2/28/95 letter to M. Salamonski from James W. Vogt B. 1 2/28/95 letter to Division of Support Enforcement and Recovery supervisor, from James W. Vogt C. 9/20/96 letter to Maine Department of Human Services hearings clerk, from James W. Vogt D. 10/7/96 Notice of Hearing

The following findings of fact were made as a result of the hearing: The charges for health-related care or treatment that the Department continues to assert are due from James W. Vogt are-. a) January 1 994 charges by Margaret A. Ellis, M.D., for both children, plus prescription medications, totaling $96.74 (Exhibits 20, 21, 23) b) January 1 994 charges by Margaret A. Ellis, M.D., for the child Zoe, not reimbursed by insurance, a balance of $5.20 c) February 7, 1 995 charges by Susan Russett-Collett, D.D.S., for dental care or treatment for both children, totaling $1 36.00 (Exhibit 24) d) March 21, 1 995 charges by Susan Russett-Collett, D.D.S., for dental care or treatment for both children, totaling $106.00 (Exhibit 1 2) e) September 1 3, 1 995 charges by Susan Russett-Collett, D.D.S., for dental care or treatment for both children, totaling $106.00 (Exhibit 1 9) f) [April 5?1, 1 995 charges by Atlee/Gleaton Eye Care P.A., for eye examinations for both children, totaling $1 20.00 (Exhibit 25-26) No evidence was submitted that would demonstrate facts sufficient to serve as a basis upon which James W. Vogt might be excused from making contributions as ordered by his Divorce Judgment for the items referred to at (a) and (b) above. November22,1996 Page 4 e-"- "I'@ ell-- With reference to items (c), (d), Mr. Vogt did not present competent evidence showing that the services for which these amounts were billed were either unnecessary

or inappropriate. It is concluded that they were provided in the ordinary course of dental care for children. With reference to item (f), no basis has been shown upon which James W. Vogt might be excused from making contributions as ordered by his Divorce Judgment for these items. As a result of the evidence and argument presented at this review, the hearings officer has determined that: James W. Vogt owes a total of $235.42 as his share of the medical, dental, and eye care costs that the Division of Support Enforcement and Recovery now alleges to be, in part, his responsibility. The reason for reaching this conclusion is as follows: Mr. Vogt's obligation generally with reference to health care expenses for his children (during the periods in which the expenses in issue here were incurred) is not in dispute. The percentage share for which he is responsible is not in dispute. Mr. Vogt's arguments related to the specifics of individual charges for which his contributions were alleged due. As noted above, no basis has been shown upon which James W. Vogt might be excused from making contributions as ordered by his Divorce Judgment for the items referred to at (a) and (b). With reference to items (c), (d), and (e), Mr. Vogt has contended that expenditures totaling $408.00 in an 1 8-month period for treatment of baby teeth were unwarranted, and thus that he should not be obligated to contribute toward the full amount of these expenditures. Mr. Vogt did not, however, present competent evidence showing that the services for which these amounts were billed were either unnecessary or inappropriate. It is concluded that Mr. Vogt is obligated to contribute toward these dental care November 22, 1996 costs, in the amount of his share of such costs as established by the District Court. With reference to item (f), no basis has been shown upon which James W. Vogt might be excused from making contributions as ordered by

his Divorce Judgment for these items. Thus it must be concluded that Mr.-Vogt is obligated to contribute, at the percentage rates specified in applicable District Court orders, for all of the costs referred to above. Mr. Vogt did not indicate that he was contesting the Department's allegations that he is obligated to contribute 48% toward the costs for the services referred to in Exhibits 20-26, or $1 71.82 ($357.94 x 48% = $1 71.82), and that he is obligated to contribute 30% toward the costs for the services referred to in Exhibits 1 2 and 1 9, or $63.60 ($21 2.00 x 30% = $63.60). The total of Mr. Vogt's obligations is thus $235.42. You have a right to appeal this decision in Maine Superior Court under Rule 80C of the Maine Rules of Civil Procedure. If a pleading is filed for judicial review of this decision, collection action will not be stayed except as provided in the Maine Administrative Procedures Act, 5 MRSA Sec. 11004. DATED: November 22. 1996
/s#David T illegible
Hearings Officer

DHS APPEAL DENIAL – PERKINS

STATE OF MAINE	SUPERIOR COURT
YORK, ss.	CIVIL ACTION
	DOCKET AP-98-043
JAMES W. VOGT)	
PLAINTIFF/APPELLANT)	
)	
V)	
MAINE DEPT OF HUMAN)	ORDER
SERVICES)	
RESPONDENT)	

This matter is before the court on petitioiner's appeal of a corrected June 29, 1998 decision of a Heraing

officer of the Department of Human Services establishing the net child support debt of petitioner for the period of 8/13/93 through 1/6/98 at $2,442.14 and his net credit for health and dental and ey care as of 1/6/98 as $298.15.

Having reviewed the record and considered the memoranda and arguments of the parties, this court is stisfied that there was sufficient and substantial competent evidence to support the findings of the Hearing Officer. Neither does the decision reflect an abuse of discretion nor an error of law.

Therefore, the entry is

Appeal denied.

Decision of the Department of Human services affirmed.

Dated August 11th, 1999

/s#Stephen L. Perkins

Active-Retired Justice, Superior Court

ORDER FOR PROTECTION FROM ABUSE

STATE OF MAINE Lincoln, ss.	DISTRICT COURT DISTRICT SIX DIVISION OF LINCOLN LOCATION – WISCASSET DOCKET # WIS-92-pa-043
JAMES W. VOGT DEFENDANT	)
V	) ORDER FOR
NANCY J. CHURCHILL PLAINTIFF	) PROTECTION FROM) ABUSE

The defendant is prohibited from threatening, assaulting, molesting, attacking, harassing or otherwise abusing the plaintiff.

The defendant is prohibited from going upon the premises of any place of employment of the plaintiff.

Plaintiff is awarded custody of minor children in accordance with Judge Westcotts order in the divorce (which was birdnesting, living in the same home and switching residence twice daily.)

Another issued again on 11 August 1993 without hearing.

/s#Joseph Field
Joseph H. Field
Judge, Maine District Court

ORDER

Aid and abet tampering, pay her $6000 in fees while finding her in contempt

STATE OF MAINE	DISTRICT COURT
Lincoln, ss.	DISTRICT SIX
	DIVISION OF LINCOLN
	LOCATION – WISCASSET
	DOCKET # WIS-92-pa-043
JAMES W. VOGT	)
DEFENDANT	)
	)
V	) ORDER
NANCY J. CHURCHILL	)
PLAINTIFF	)

This matter came before me during a case management conference held January 24, 1996. Plaintiff was present pro se, and Defendant was present through her counsel. The case management conference involved disposition of several motions heard by me on November 14, 1995, as well as the disposition of various motions subsequently filed by the parties. Based upon testimony and evidence presented by the parties at the November 14, 1995 hearing, - and the discussion held on the record at the case management conference, it is hereby ORDERED, ADJUDGED, and DECREED:

1. Plaintiff's Complaint for Protection from Harassment dated April 11, 1995 is DENIED. The facts and issues Plaintiff presented therein related to issues present during the hearing. Further, Plaintiff's need for relief will be addressed by his appeal of this matter.

2. Plaintiff's motion to set aside deed dated July 15, 1995 is DENIED.

3 . Plaintiff Is Motion Requesting Hearing for changing -Custody and Visitation dated August 16, 1995 is DENIED without prejudice. Plaintiff may resurrect this motion following his appeal and the entry of final judgment.

4 . Plaintiff Is Motion to Recuse dated August 31, 1995 is DENIED for reasons previously stated in orders dated November 6, 1993 and July 5, 1994, which denied Plaintiff's two previous motions to recuse.

5. Plaintiff's Motion for Specific Acts dated Septemher 1995 is DENIED.

6. Plaintiff Is Motion for Contempt dated October 5, 1995 is GRANTED. The Court finds that Defendant, Nancy Churchill, has interfered with Plaintiff's visitation with the children. The Court has expressed its belief that both parties love their children and have capacity to care for them in an appropriate way. The Court has 'no

concern about the children's welfare in either party's care. The Court finds, however, that Defendant used her allocation of sole parental rights and responsibilities in a way to minimize Plaintiff's contact with the children. Therefore, the Court ORDERS that Defendant make the children available during the time that the parties have arranged for telephone contact. Further, Defendant shall not schedule activities for the children which interfere with Plaintiff's visitation schedule with them. Defendant further shall not interfere with Plaintiff's management of the children while they are in his care, which includes monitoring his decision about day care. The court defers the issue of sanctions for this contempt (is written in pen after I complained that he did nothing about it, nor to prevent it).

7. if the parties reach agreement which alters the parent- child contact schedule contained in the divorce judgment, such agreement must be written and filed with the Court unless it involves a one-time change.

8. Plaintiff's Motion to Stay Immediate Income Withholding order dated November 8, 1995 is DENIED. This Court. must issue a withholding order in the absence of the parties' agreement or Plaintiff's satisfaction of certain criteria. If Plaintiff has a dispute with the Department of Human Services regarding its enforcement of the order of income withholding, he must address it directly with the Department.

9. Defendant's Application for Action Upon Report of Referee dated November 13, 1995 is GRANTED and the Referee's Report is ratified pursuant to Rule 53 of the Maine Rules of Civil Procedure.

10. Plaintiff and Defendant must have equal and unrestricted access to records to the children's records, including but not limited to medical, dental, and school records, whether or not the

child resides with the parent seeking such records and information.

11. All other motions presented to me at the November 14, 1995 hearing are DENIED except for Defendant's request for a so- called "Spickler Order," which is granted in a separate order of even date.

12. All other motions filed by either party since the November 14, 1995 hearing are DENIED.

13 . DENIED. All motions not otherwise addressed by this Order are

4. Plaintiff shall pay to Defendant's attorney the sum of $6000 as a contribution toward fees incurred in the prosecution and defense of these motions.

5 Feb, 1996

/s#Joseph Field
Joseph H. Field
Judge, Maine District Court